

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 31

INTERNATIONAL ASSOCIATION OF MACHINISTS,
AN UNINCORPORATED ASSOCIATION; CHARLES
TRUAX, INDIVIDUALLY; ETC., ET AL.,
PETITIONERS,

vs.

MARCOS GONZALES.

ON WRIT OF CERTIORARI TO THE CALIFORNIA DISTRICT COURT OF
APPEAL, FIRST APPELLATE DISTRICT

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[fol. 1]

[File endorsement omitted]

**IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE CITY AND
COUNTY OF SAN FRANCISCO**

No. 423147

MARCOS GONZALES, Petitioner,

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS, an unincorporated association; CHARLES TRUAX, individually and as International Representative thereof; THOMAS E. McSHANE, and A. C. McGRAW, as International Representatives thereof; INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL LODGE No. 68, an unincorporated association; ROBERT ROLLER, as President of said Local Lodge; REESE CONTE, as Secretary of said Local Lodge; EDWARD PECK, as Treasurer of said Local Lodge; FIRST DOE, SECOND DOE, THIRD DOE, FOURTH DOE, and FIFTH DOE, Respondents.

PETITION FOR WRIT OF MANDATE—Filed December 3, 1952

The petition of MARCOS GONZALES respectfully shows:

I

That respondents International Association of Machinists (hereinafter referred to as Grand Lodge) and International Association of Machinists, Local Lodge No. 68 (hereinafter referred to as Local Lodge) are, and at all times herein [fol. 2] mentioned were, unincorporated associations formed and existing for the purpose of collective bargaining, and of representing and safe guarding the interests of their members, and doing business in the City and County of San Francisco, State of California.

II

That respondents, Charles Truax, Thomas E. McShane and A. C. McGraw, are, and at all times herein mentioned

were, officers of respondent Grand Lodge, to wit, International Representatives thereof.

That respondents Robert Roller, Reese Conte and Edward Peck are officers of respondent Local Lodge, to wit, President, Secretary and Treasurer, respectively, thereof, and are sued herein in their said representative capacities.

Petitioner alleges on information and belief that at all times material herein all of the said named respondents were residents of the City and County of San Francisco, State of California.

III

Petitioner does not know the true names of respondents sued herein by the fictitious names of First Doe, Second Doe, Third Doe, Fourth Doe, and Fifth Doe, and prays leave to substitute said true names herein when ascertained.

IV

That prior to January 30, 1951, petitioner was a member in good standing of the respondent associations and entitled [fol. 3] to all the rights and privileges of such membership, including the right to work as a member thereof under collective bargaining agreements with employers, and the right to other benefits, including among others, the right to death benefits, sick benefits, and the aid and assistance of the said associations in all disputes with petitioner's employers and said rights were recognized by said respondent associations and the respondent officers thereof until a certain purported expulsion of petitioner from said associations occurred, as hereinafter more particularly described. Since such purported expulsion, respondent associations and the officers thereof have denied and refused to petitioner any and all rights and privileges as a member of said associations, and as a proximate and direct result thereof, petitioner has been denied employment in his usual trade and occupation as a marine machinist.

V

That on or about June 21, 1950, there was filed against petitioner by respondent Charles Truax certain charges,

to wit, that petitioner had violated Article XXV, Section 1, of the Constitution of the respondent Grand Lodge; in that he had allegedly made or caused to be made or circulated false and malicious statements reflecting upon the private and public conduct of an officer of said Grand Lodge, to wit, the respondent Charles Truax, and that this conduct was "unbecoming conduct." That the said alleged false and [fol. 4] malicious statements consisted of the institution of an action for damages in the Superior Court of the State of California, in and for the City and County of San Francisco on March 9, 1949, entitled "Marcos Gonzales, Plaintiff v. Kenneth Nelson, Charles Truax, Doe One, Doe Two and Doe Three, Defendants," No. 384791, seeking damages for assault and battery alleged to have been committed by the defendants in that action against petitioner.

VI

That the petitioner had on the said date filed said action against the defendants named in said action; that a judgment of non-suit was returned as against the defendant Truax, and a judgment of \$10,000 was recovered by petitioner against defendant Nelson in said action.

VII

That on or about July 7, 1950, a purported trial was held in the City and County of San Francisco by respondent Grand Lodge and Local Lodge; that respondent Truax appeared as "plaintiff" or prosecutor in the said alleged trial. That petitioner was present at the said trial.

VIII

That following said trial, and on July 19, 1950, the decision of the trial committee that petitioner was guilty as charged was reported to the respondent associations; that members of respondent Local Lodge thereupon voted, in accordance with the provisions of Article K, Section 6, of [fol. 5] the Constitution of said Local Lodge, which provides as follows:

"Sec. 6. The trial committee shall report at the next regular meeting of the local lodge. Such report shall be in two parts as follows:

"First: The report shall contain the findings and verdict of the trial committee together with a synopsis of the evidence and testimony presented by both sides.

"After the trial committee has made necessary explanation of its intent and meaning, the trial committee's verdict with respect to guilt or innocence of the defendant, shall be submitted without debate to a vote by secret ballot of the members of the local lodge.

"Second: If the lodge concurs with a 'guilty' verdict of the trial committee, the recommendations of the committee as to the penalty to be imposed shall be submitted in a separate report to the lodge and voted on by secret ballot of the members then in attendance."

That the vote of said members was 43 to 31 against the recommendation of the trial committee.

IX.

That thereafter on July 28, 1950, respondent Truax ap-[fol. 6] pealed the decision of the membership rejecting the recommendation of the trial committee to the Grand Lodge, in accordance with the provisions of Article K of said Constitution, of said Local Lodge.

X

That thereafter on or about August 2, 1950, said Local Lodge purported to reconsider the action taken at the meeting of July 19, and again voted on the report and recommendation of the trial committee. That the vote of the membership on said August 2, 1950, was 29 to 14 to sustain the report and recommendation of said trial committee.

XI

That by reason of the said purported reconsideration there was a purported expulsion of petitioner by the said respondent associations. That thereafter, on or about Au-

gust 15, 1950, petitioner appealed the purported expulsion to the International President, in accordance with the Constitution and Laws of the respondent associations. That said President purported to set aside expulsion of petitioner and imposed upon him a penalty, to wit, payment of a \$500 fine and the furnishing of a written apology to respondent Truax, a copy of said apology to be furnished to respondent Grand Lodge.

XII

That thereafter petitioner pursued the various appeals permissible and available under the Constitution and Laws [fol. 7] of the respondent associations, and on November 7, 1952, by the final decision of the Executive Council of said Grand Lodge, the decision of the President of said Grand Lodge was sustained. That petitioner has refused, on the grounds that the said decision was illegal as hereinafter set forth, to pay the said fine or apologize to respondent Truax. That petitioner has been in effect expelled from membership in the respondent associations, by a notice to him that his membership had lapsed by reason of his failure to comply with the said decision of the President of the respondent Grand Lodge.

XIII

That said purported expulsion, fine, and denial of all benefits of membership to your petitioner was and is null and void and of no effect, and was and is illegal. That said acts of respondents illegally deprived petitioner of the rights and privileges of members in the associations, and each of them, in that the procedure set forth in the Constitutions of the respondent associations with respect to the trial and punishment of members was substantially violated in numerous respects, including

- 1) The purported reconsideration of the vote of the membership rejecting the report and recommendation of the trial committee was without authority under the Constitutions and laws of the respondent associations.

- 2) Petitioner was deprived of a fair and impartial tribunal [fol. 8] for the said purported trial.

3) Petitioner was denied due process of law in the course and conduct of said trial and its consideration by the members of Local Lodge and the appeals thereafter.

4) The acts charged against petitioner do not constitute an offense under the provisions of the Constitution and laws of respondent associations, authorizing or warranting such punishment.

5) Filing of charges against petitioner, his trial, purported expulsion, fine and other punishment by reason of your petitioner's filing of the aforesaid law suit against the respondent Truax and Kenneth Nelson constituted a violation of your petitioner's constitutional rights under the Constitutions of the United States and California to freedom of speech and to use of the civil courts.

6) The said charges made against petitioner and his punishment after the purported trial were made for the purpose of denying and in fact resulted in a denial to petitioner of his right to freedom of speech.

XIV

By reason of the illegal procedures set forth above and by reason of the violation of petitioner's rights to freedom of speech as hereinabove set forth, petitioner has been deprived of his rights as a member of said associations without due process of law.

[fol. 9]

XV

From and after March 5, 1952, your petitioner has been unable to secure employment in his former occupation, solely by reason of the illegal, wrongful and improper expulsion and punishment of petitioner by respondent associations, and your petitioner is informed and he believes and therefore alleges that in all probability he will be unable to secure regular employment in his trade or occupation until the final decision of this Court on this petition for mandate restores your petitioner to his former rights, privileges, and status in said respondent associations. That during the period from March 5, 1952, to date of this petition, petitioner has suffered loss of earnings in the approxi-

mate sum of \$5,320. That at the time of trial of this action petitioner will ask leave of court to amend this petition to insert herein such additional damages as may be suffered by your petitioner from the date hereof to the date of trial.

XVI

That your petitioner has duly sought and exhausted all remedies available to him within respondent associations, and your petitioner has no plain, speedy or adequate remedy in the ordinary course of law.

Wherefore, your petitioner prays that an alternative writ of mandate be issued against respondents, returnable within such time as the Court may allow, compelling respondents to restore to petitioner all of his rights, and privileges [fol. 10] in respondent associations and to reinstate petitioner as a member in good standing thereof, without payment of any fine or the statement of any apology to the respondent Truax or to any other person, or to show cause why they should not do so; for damages suffered by petitioner as a result of petitioner's illegal and unlawful expulsion from respondent associations as hereinabove set forth, and for such other and further relief as to the Court may seem meet and proper in the premises.

Gladstein, Andersen & Leonard, by /s/ Lloyd E. McMurray, Attorneys for Petitioner.

[fol. 11]

[File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA ORDER GRANTING ALTERNATIVE WRIT OF MANDATE AND DIRECTING ISSUANCE THEREOF—December 3, 1952

Upon reading and filing the verified petition of Marcos Gonzales, and on motion of Lloyd E. McMurray, Esq., attorney for petitioner, and good cause appearing:

It is hereby ordered that an alternative writ of mandamus issue out of and under the seal of this Court, directed to

International Association of Machinists, an unincorporated association, Charles Truax, individually and as International Representative thereof, Thomas E. McShane and A. C. McGraw, as International Representatives thereof, International Association of Machinists, Local Lodge No. 68, an incorporated association, Robert Roller, as President of said Local Lodge, Reese Conte, as Secretary of said Local Lodge, Edward Peck, as Treasurer of said Local Lodge, First Doe, Second Doe, Third Doe, Fourth Doe, and Fifth Doe, commanding them that they do restore to Marcos Gonzales, petitioner herein, all his rights and privileges in the said International Association of Machinists and International Association of Machinists, Local Lodge No. 68, and reinstate said petitioner as a member in good standing thereof without payment of any fine or the statement of any [fol. 12] apology to the respondent Truax or to any other person, and that they pay damages to petitioner for his wrongful and illegal expulsion from said associations, or that in default thereof, they show cause before this Court in Dept. 21 thereof, at the City Hall in the City and County of San Francisco, State of California, on the 11th day of December, 1952, at 10 o'clock A.M. of said day, why they have not done so, by the return to said writ.

It is further ordered that a copy of said petition be served on said respondents with such writ.

Dated this Dec 3—1952 day of December, 1952.

/s/ Albert C. Wollenberg, Judge of the Superior Court.

[fol. 16] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

NOTICE OF MOTION TO STRIKE PORTIONS OF PETITION—Filed
December 23, 1952

To Marcos Gonzales and to Gladstein, Anderson & Leonard
and Lloyd E. McMurray, his attorneys:

Please take notice that on the 30th day of December, 1952,
at the hour of 10:00 o'clock A.M., or as soon thereafter as

counsel may be heard, that on behalf of the above named Respondents, except Charles Truax, and First through Fifth Doe, there will be a motion made to the court for an order striking from the petition the following allegations contained therein;

Page 3, lines 26 through 28; "and a judgment of \$10,000.00 was recovered by petitioner against defendant Nelson in said action."

Page 5, line 23 through 27; "That petitioner has been in effect expelled from membership in the respondent associations, by a notice to him that his membership had lapsed by reason of his failure to comply with the said decision of the President of the respondent Grand Lodge."

Page 5, lines 29 through 32 and page 6, lines 1 through 5: "That said purported expulsion, fine and denial of all benefits of membership to your petitioner was and is null and void and of no effect, and was and is illegal. That [fol. 17] said acts of respondents illegally deprived petitioner of the rights and privileges of members in the associations, and each of them, in that the procedure set forth in the Constitutions of the respondent associations with respect to the trial and punishment of members was substantially violated in numerous respects."

Page 6, lines 6 through 9: "The purported reconsideration of the vote of the membership rejecting the report and recommendation of the trial committee was without authority under the Constitutions and laws of the respondent associations."

Page 6, lines 10 and 11: "Petitioner was deprived of a fair and impartial tribunal for the said purported trial."

Page 6, lines 12 through 14: "Petitioner was denied due process of law in the course and conduct of said trial and its consideration by the members of Local Lodge and the appeals thereafter."

Page 6, lines 15 through 18: "The acts charged against petitioner do not constitute an offense under the provisions of the Constitution and laws of respondent associations, authorizing or warranting such punishment."

Page 6, line 19 through 25: "Filing of charges against petitioner, his trial, purported expulsion, fine and other punishment by reason of your petitioner's filing of the aforesaid law suit against the respondent Truax and [fol. 18] Kenneth Nelson constituted a violation of your petitioner's constitutional rights under the Constitutions of the United States and California to freedom of speech and to use of the civil courts."

Page 6, lines 26 through 29: "The said charges made against petitioner and his punishment after the purported trial were made for the purpose of denying and in fact resulted in a denial to petitioner of his rights to freedom of speech."

Page 6, lines 31 and 32, page 7 line 1 through 3:

"By reason of the illegal procedures set forth above and by reason of the violation of petitioner's rights to freedom of speech as hereinabove set forth, petitioner has been deprived of his rights as a member of said associations without due process of law."

Page 7, lines 5 through 16: "From and after March 5, 1952, your petitioner has been unable to secure employment in his former occupation solely by reason of the illegal, wrongful and improper expulsion and punishment of petitioner by respondent associations, and your petitioner is informed and believes and therefore alleges that in all probability he will be unable to secure regular employment in his trade or occupation until the final decision of this Court on this petition for mandate restores your petitioner to his former rights, privileges and status in said respondent associations. That during the period from March 5, 1952, to date of this petition, petitioner has suffered loss [fol. 19] of earnings in the approximate sum of \$5,320."

Said motion will be made on the ground that said allegations are irrelevant and redundant and will be based upon this notice, the pleadings and papers on file herein and the Points and Authorities served herewith.

Phoenix and Kennedy, By /s/ Eugene K. Kennedy,
Attorneys for Respondents, Except Charles Truax.

[fol. 23]

[File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

ANSWER—Filed December 23, 1952

Come now the respondents named herein, except respondent, Charles Truax, and First through Fifth Doe and answer the petition on file herein as follows:

I

Answering paragraph IV, respondents deny that petitioner was expelled from said Associations. Respondents further deny that petitioner has been denied employment in his usual trade and occupation by any acts whatsoever of respondents.

II

Answering paragraph V, respondents deny that the alleged false and malicious statements referred to in said paragraph consisted of an institution of an action for damages. Respondents admit that one of the bases of the charges filed by respondent Charles Truax included allegations set forth in the complaint in the civil action referred to in said paragraph V.

III

Answering paragraph XII, respondents deny that petitioner pursued the various appeals permissible and available under the Constitution and Laws of the respondent [fol. 24] associations.

Respondents deny that the final decision of the Executive Council was made on November 7, 1952, but allege that it was made on or about January 30, 1951.

Answering the allegations contained in said paragraph XII that petitioner has refused on the ground that said decision was illegal as hereinafter set forth to pay the said fine or apologize to respondent Truax, respondents allege that they do not have sufficient information or belief to answer said allegation and on that basis deny the same.

IV

Respondents deny each and every allegation contained in paragraph XIII.

V

Respondents deny each and every allegation contained in paragraph XIV.

VI

Respondents deny each and every allegation contained in paragraph XV.

VII

Respondents deny each and every allegation contained in paragraph XVI.

As a Further and Separate Answer and Defense to the Petition, Respondents Allege

[fol. 25]

1

That petitioner has not sought or exhausted all the remedies available to him within the respondent associations, in that petitioner failed to take an appeal from the decision of the executive council to a convention of the Grand Lodge or to the membership at large by submission thereof through the referendum, as provided in Section 6 of the Constitution of the Grand Lodge District and Local Lodges, Councils and Conferences, set forth as follows on Page 59 of said Constitution:

"Sec. 6. Appeals may be taken from the decision of the International President to the Executive Council. Appeals may be taken from the decision of the Executive Council to a convention of the Grand Lodge, or to the membership at large by submission thereof through the referendum. All appeals shall be laid before the body to whom addressed through the General Secretary-Treasurer. Before any appeals can be taken from any decision of the Executive Council, the decision, and all orders of the Executive Council in relation thereto, must be fully complied with by all parties

concerned therein in order to entitle them to enter an appeal, and in no case shall any district or local lodge, or any individual member or members thereof, appeal to the civil courts for redress until after having ex-[fol: 26]hausted all rights of appeal under the provisions of this Constitution. No member of the Executive Council shall have a vote on any appeal on which he has already rendered a decision."

As and for the Further and Separate Answer to
Said Petition, Respondents Allege

I

That the plain, speedy and adequate remedy in the ordinary course of law is available to the petitioner under the provisions of Sections 8 (b) (1) and 8 (b) (2) of the National Labor Relations Act as amended.

As and for a Further and Separate Answer and
Defense to the Petition Respondents Allege

I

Respondents deny that under the rules and regulations of their organizations that they have authority or ability to reinstate petitioner.

Wherefore, respondents pray that the petition herein be quashed and that respondents be awarded judgment, together with costs of suit and for such other and further relief as to the court may seem proper.

Phoenix and Kennedy, By /s/ Eugene K. Kennedy,
Attorneys for Respondents, Except Charles Truax.

[fol. 28] [File endorsement omitted].

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
MINUTE ORDER DENYING MOTION TO STRIKE PARTS OF
PETITION AND OVERRULING DEMURRER—January 22, 1953

In this action the motion to strike out parts of petition, and, the demurrer of respondent, except Charles Truax and

First Doe through Fifth Doe, having been heretofore submitted to the Court for consideration and decision, and now the Court having considered the same and being fully advised in the premises.

It is ordered that said motion to strike out be denied.

It is further ordered that the demurrer to petition be overruled, with leave to respondents to answer within 10 days.

[fol. 30]

[File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
MOTION AND NOTICE OF MOTION FOR LEAVE TO FILE SUPPLEMENT TO PETITION FOR WRIT OF MANDATE—Filed
February 2; 1954

To Respondents Above Named and to Messrs. Phoenix and Kennedy, Their Attorneys:

You will each please take notice that on Monday, February 8, 1954, at the hour of 10 o'clock a. m. of said day, or as soon thereafter as counsel can be heard, petitioner herein will move the above-entitled Court before the Hon. John B. Molinari, Judge thereof, in his courtroom, City Hall, San Francisco, California, for its order allowing the filing of a supplement to his petition herein, a copy of which supplement is attached hereto and incorporated herein as though fully set forth.

Dated: February 1, 1954.

Gladstein, Andersen & Leonard, By /s/ Lloyd E. McMurray, Attorneys for Petitioner.

[fol. 32]

[File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
SUPPLEMENT TO PETITION FOR WRIT OF MANDATE—Filed
February 2, 1954

Comes now petitioner herein and by leave of Court supplements his petition for writ of mandate on file herein by adding thereto the following additional allegations:

XVII

That by reason of petitioner's said wrongful and illegal expulsion from respondent association, and by threats made by respondents against petitioner and by other acts of said respondents, petitioner has been caused to and has suffered grievous physical and mental pain and suffering, humiliation, worry and degradation, to his damage in the sum of \$15,000.

XVIII

That the acts of the respondents as herein set forth were malicious acts of fraud and oppression entitling petitioner to exemplary damages under the provisions of Sec. 3294 of the Civil Code.

Wherefore, your petitioner prays in addition to the relief heretofore prayed for that he be granted the sum of \$15,000 as damages for humiliation and mental and physical suffering, together with such damages as the Court [fol. 33] may deem meet and just by way of exemplary damages.

Dated: February 1, 1954.

Gladstein, Andersen & Leonard, By /s/ Lloyd E.
McMurray, Attorneys for Petitioner.

[fol. 34] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MINUTE ORDER OF JUDGMENT—June 7, 1954

In this cause, heretofore submitted, the Court ordered as follows, to-wit:

1) Motion for leave to file supplement to and to amend writ of mandate granted.

2) Writ of mandate ordered issued commanding and directing the respondents to restore petitioner to all of his rights and privileges in respondent associations and to reinstate petitioner as a member in good standing thereof, without payment of any fine or the statement of any apology to the respondent Truax or to any other person.

3) The petitioner is awarded damages only against the respondents, International Association of Machinists, (Grand Lodge), and International Association of Machinists, Local Lodge No. 68, for \$6,800.00 damages for loss of wages and \$2500.00 damages for mental suffering, humiliation and distress.

4) The trial court retains jurisdiction for purpose of awarding such additional damages as might be suffered by petitioner until he is actually restored to his rights and privileges in the Association and reinstated therein.

Plaintiff to prepare findings.

[fol. 35] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

MEMORANDUM OF DECISION—June 7, 1954

This Court has made its order that a Writ of Mandate directing and compelling respondents to restore to petitioner all of his rights and privileges in respondent associations and to reinstate petitioner as a member in good standing thereof without payment of any fine or the statement of any apology to the Respondent Truax or to any

other person, and has ordered judgment for damages, upon the ground and for the reason that petitioner was deprived of his said rights, duties and membership in an illegal manner.

In arriving at its decision this Court is not unmindful of the following general propositions of law which are applicable to labor unions and associations, to wit: That the Charter of a subordinate lodge and the constitution and by-laws of the parent organization constitute the contract between the lodge and the parent organization; that the subordinate lodge constitution and by-laws constitute a contract between the lodge and its members; that the rights and duties of members, the conditions of membership, and the gaining and losing of membership are limited and must be measured by the terms of the contract; and that a [fol. 36] member of associations of this type must first exhaust the rights afforded him by the tribunals of the association before he may seek redress from the courts. (Smitherham v. Laundry Workers Union, 44 CA (2d) 131; Bush v. International Alliance, 55 CA (2d) 357; McConville v. Milk Union, 106 Cal. App. 696).

It is likewise settled law, however, that once a person has acquired the personal right of membership under such a contract he cannot be deprived of it except upon a strict observation of the proceedings prescribed for its termination in the constitution or by-laws of the association of which he is a member; and that where such an association has violated its own laws and regulations and has arbitrarily violated a member's property rights the member need not exhaust his remedies within the organization before resort is had to the courts. (Dingvall v. Amalgamated Association, 4 CA 565; Weber v. Marine Cooks, 93 CA (2) 327; Harris v. National Union, 98 CA (2d) 733; Cason v. Glass Bottle Blowers, 37 Cal. (2d) 134.)

Aside from the question as to whether or not Article XXV, Section 1, of the Grand Lodge Constitution was effective at the time the petitioner made the allegedly false and malicious statements reflecting upon the private and/or public conduct of respondent Truax, it appearing that the said statements were contained in a complaint for damages for assault and battery filed in the Superior Court

of the City and County of San Francisco, filed on March 9, [fol. 37] 1949, and it further appearing that said Article XXV, Section 1, became effective April 1, 1949, (upon a revision of a previous Constitution which may have contained similar provisions) we are of the opinion that there was sufficient evidence before the association to support the conclusion of the Trial Committee that the petitioner had violated said provisions particularly in view of the fact that petitioner admitted before the Trial Committee on July 7, 1950, that he had no proof or evidence that Truax had assaulted him or that he instructed or advised anyone else to do it. Conceding for the purposes of this decision that there was such a Constitutional provision in effect at the time petitioner allegedly violated it, we are constrained—it not being the province of this Court to consider the weight of such evidence or to substitute our judgment thereon for that of Trial Committee before whom petitioner was tried—to hold that there was evidence to support its conclusion that petitioner was guilty of such violation.

The illegality of the proceedings appears after the Trial Committee submitted its report to the membership of the Lodge. Article K of the Constitution for the Local Lodge specifically and in great detail sets forth the trial procedure and the voting upon said report. In Section 6 of Article K it is specifically provided that the "trial committee shall report at the next regular meeting", and the Trial Committee did so in this case. That Article clearly [fol. 38] indicates that the Trial Committee's recommendations are to be voted upon at this meeting. That procedure was followed in this case and the membership by secret ballot rejected the recommendation of the Trial Committee and in effect rendered a "Not Guilty" verdict. Thereafter, at the next meeting on August 2, 1950, and without any previous notice therefore, the membership re-cinded its action of the previous meeting and concurred in the "guilty verdict" of the trial committee and voted to expel petitioner. The only authority for this subsequent action is to be found in Rule 27 of Rules of Order of the Constitution for Local Lodges which provides: "All questions, *unless otherwise provided*, shall be decided in accordance

with the Robert's Rules of Order," (italics ours). It is our opinion that this action taken on Aug. 2, 1950, is illegal. Although Robert's Rules of Order provide for the re-cission of some action previously taken, they cannot, as said in *Harris v. National Union, etc.*, 98 CA (2) 733, "change the plain requirement of the constitution nor convert by procedural slight of hand" the procedure which the constitution requires. Petitioner was acquitted under the specific provisions of Article K, the procedural provisions of which, cannot be avoided by resort to Robert's Rules of Order. We are also of the opinion that even if it be conceded that the action of Aug. 2, 1950, was proper that the penalty of expulsion is illegal. Section 7 of Article K requires "a $\frac{2}{3}$ vote of those voting to expel the defendant [fol. 39] from membership" (italics ours). The vote was 29 yes, 14 noes and one blank. Forty-four persons voted on the question of the Trial Committee's recommendation of expulsion. A $\frac{2}{3}$ vote required 30 to vote for expulsion. Merely because one person declined to vote either for or against expulsion is no indication that he was not voting. It may be reasoned that by declining to vote either for or against expulsion he was exercising his right to indicate that he was in favor of some form of punishment other than that recommended by the committee as contemplated in Section 7 of Article K.

Although petitioner could then have sought redress to the courts, he chose to appeal to the International President as provided by the Grand Lodge Constitution. The International President should have reversed the decision of Aug. 2, 1950, on the grounds that the same was illegal. Instead he affirmed the finding of "guilty" but modified the penalty to a \$500.00 fine and an apology. In this regard it should be pointed out that the only penalty provided for the offense herein charged is "fine or expulsion, or both" (Article XXV Section 1 of the Grand Lodge Constitution). There is no penalty providing for an apology nor is there any fine authorized in excess of \$50.00. (Section 8 of Article K). Nowhere do we find any provision empowering the International President to impose a penalty other than expulsion or "fine in excess of \$50.00", unless the [fol. 40] same is *first* approved by the Executive Council,

which approval was not had in this case. It must be noted also that the International President regarded the action of Aug. 2, 1950, as a "reconsideration" of the action taken on July 19, 1950, rather than a motion "to rescind." (See Plaintiff's Exhibit No. 5). Conceding for sake of argument, that reconsideration of the action taken on July 19, 1950, would have been proper, such action should have been taken on July 19, 1950, and not on Aug. 2, 1950. Rules 24 and 25 of the Rules of Order of the Constitution for Local Lodges provide, respectively, as follows: "When a question has been decided it can be considered by a majority vote of those present. . . . A motion to reconsider must be made and seconded by two members who voted with the majority." It does not appear that this procedure was followed either on July 19th or on August 2nd.

The fact that in his decision the International President stated "that his decision would have been exactly the same regardless of the fact that the Lodge at its meeting on Aug. 2, 1950, reversed the decision made on July 19" does not alter the situation. This statement is apparently with reference to the appeal respondent Truax had taken on July 28, 1950, with reference to the action taken on July 19, 1950, which appeal Truax withdrew on Aug. 22, 1950, after the action taken on Aug. 2, 1950, and after Petitioner's appeal filed on August 15, 1950. The International President was not considering Truax's appeal, but that of [fol. 41] Petitioner, which not only encompassed the findings of the Trial Committee but all the procedures of July 19 and Aug. 2, as well. Although the International President agreed with the findings of the Trial Committee and found that the same were based on substantial evidence, it was his duty as an appellate tribunal to reverse the Local Lodge upon the ground that the prescribed constitutional procedures had not been followed. If Truax had prosecuted his appeal, then the action of the International President in affirming the findings of the Trial Committee would have been regular, because then he would be reversing the Local Lodge as to the action it had taken on July 19, the procedures up to that time being legal. Of course, as stated above, the penalty as modified by him was not legal. What we have stated here with reference

to the International President applies likewise to the Executive Committee which affirmed his decision.

When the Executive Committee affirmed the decision of the International President and the Local Lodge on February 11, 1952, advised petitioner that it would not continue to accept dues until the penalty fixed by the International President was complied with, the petitioner was deprived of rights and privileges in the union and in effect was suspended from membership (See Respondents' Exhibit E).

Petitioner was, by virtue of said action, prevented from working as a machinist and thereby sustained loss of wages. [fol. 42] The petitioner was out of work from March 4, 1952, to June 26, 1953, when he became incapacitated because of illness. We have assessed the damages for said period to be in the sum of \$6,800.00 at the rate of \$100.00 per week, which, as testified by petitioner, was the lowest weekly wage received by him during the years 1950, 1951 and 1952. Had petitioner not been incapacitated by a disabling illness on June 26, 1953, which prevented him from engaging in any employment whatever, this Court would have been obliged to assess damages on the above basis until the date of judgment. The award of damages for \$2,500.00 for mental distress is proper, we believe, under the evidence and all the circumstances, and pursuant to the authority of *Taylor v. Marine Cooks and Stewards*, 117 CA (2d) 556. We did not award any exemplary damages because there is no evidence of malice or fraud on the part of the respondents.

With respect to damages, the Court has made a further order to the effect that the trial court retains jurisdiction for the purpose of awarding such additional damages as might be suffered by petitioner until he is actually restored to his rights and privileges in the respondent associations and reinstated to membership therein.

The attorneys for petitioner are directed to prepare Findings of Fact and Conclusions of Law pursuant to the Minute Orders for a Writ of Mandate and for judgment for damages heretofore made and pursuant to this memorandum.

[fol. 43] Dated: June 7, 1954.

/s/ John B. Molinari, Judge of the Superior Court.

[fol. 44]

[File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

Findings of Fact and Conclusions of Law—July 29, 1954

The above cause came on for trial before the Court, sitting without a jury, on the 25th day of August, 1953, and again on the 3rd day of February, 1954, and evidence having been received and memoranda of law having been thereafter submitted to the Court and the cause submitted, and the Court having issued its memorandum of decision, the Court now makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

I

It is true that the respondents International Association of Machinists (hereinafter referred to as Grand Lodge) and the International Association of Machinists, Local 68 (hereinafter referred to as Local Lodge), are and at all times material herein were unincorporated associations formed and existing for the purpose of collective bargaining and of representing and safeguarding the interests of their members, and that said associations were at all times material herein and are doing business in the City and County of San Francisco, State of California:

[fol. 45]

II

It is true that respondents Charles Truax, Thomas E. McShane and A. C. McGraw at all times material herein were officers of the respondent Grand Lodge.

It is true that respondents Robert Roller, Reese Conte and Edward Peck are officers of respondent Local Lodge.

III

It is true that at all times material herein prior to the purported expulsion of petitioner from said respondent associations, petitioner was a member in good standing of the respondent associations and entitled to all of the rights

and privileges of such membership; and that since said purported expulsion of petitioner, the respondent associations and the officers thereof have denied and refused to petitioner any and all rights and privileges as a member of said associations. It is true that as a proximate and direct result thereof petitioner has been denied employment in his usual trade and occupation as a marine machinist.

IV

It is true that on or about June 21, 1950, respondent Truax filed against petitioner in the respondent Local Lodge certain charges, to wit, that petitioner had made or caused to be made or circulated false and malicious statements reflecting upon the private and public conduct of the said Charles Truax as an officer of the respondent Grand Lodge and that this said alleged conduct was "unbecoming conduct." It is true that the said alleged false and malicious statements consisted of the allegations contained in a complaint for damages filed in the Superior Court of the State of California in and for the City and County of San Francisco in an action entitled "Marcos Gonzales, Plaintiff, v. Kenneth Nelson, Charles Truax, Doe One, Doe Two, and Doe Three, Defendants," No. 384791 in the files and records of this Court, by which action plaintiff sought damages for assault and battery alleged to have been committed against petitioner.

V

It is true that petitioner had in the said action of *Gonzales v. Nelson, Truax, et al.*, recovered a judgment in the sum of \$10,000 against one Nelson, a defendant in that action.

VI

It is true that on or about July 7, 1950, a purported trial of petitioner was held by the respondent associations; that thereafter, on July 19, 1950, the decision of the trial committee that petitioner was guilty as charged and the recommendation of the said committee that petitioner be expelled were reported to the respondent associations; that members of respondent Local Lodge thereupon voted se-

cretly in accordance with the provisions of Article K, Sec. 6, of the Constitution of said Local Lodge; that the vote of the said members was 43 to 31 against the recommendation of the trial committee.

[fol. 47]

VII

It is true that on or about August 2, 1950, the said Local Lodge purported to reconsider and rescind the action taken at the meeting of July 19 and again voted secretly on the report and recommendation of said trial committee, and that the ballots were 29 to sustain the report and recommendation of said trial committee, plus 14 against the recommendation, and one blank ballot.

VIII

It is true that the Constitution and By-Laws of said respondent associations require a secret ballot by those present at the meeting, and a two-thirds majority of those voting to support a recommendation of the trial committee that a member be expelled from said associations.

It is true that the Constitution and By-Laws of said Local Lodge require that a motion to reconsider must be made, and seconded by two members who voted with the majority on the previous vote, and that no record was or could have been made of the votes of individual members in the secret balloting held on July 19, 1950.

IX

It is true that thereafter petitioner appealed the purported expulsion to the President of said Grand Lodge, in accordance with the Constitution and laws of the respondent associations, and that the said President purported to set aside the expulsion of petitioner and imposed [fol. 48] upon a penalty of \$500 fine and the furnishing of a written apology to the respondent Truax.

X

It is true that thereafter petitioner pursued various appeals available under the Constitution and laws of the said respondent associations and that on November 7, 1952,

the decision of the President of the said Grand Lodge was purported to be sustained by the final decision of the Executive Council of the said Grand Lodge.

(Inserted)

Amended
7/29/54
John B. Molinari
Judge
(Signed)

(It is true that the Constitutions and
(
(laws of the respondent associations
(
(provided a further appeal to the con-
(
(vention of the Grand Lodge, and that
(
(petitioner did not pursue such further
(
(appeal.

XI

It is true that petitioner refused, on the grounds that the said decision was illegal, to pay the said fine or apologize to respondent Truax. It is true that petitioner has been in effect expelled from membership in the respondent associations by a notice from the said associations to him that his membership had lapsed by reason of his failure to comply with the said decision of the President of the respondent Grand Lodge.

[fol.49]

XII

It is true that from March 4, 1952, to June 26, 1953, petitioner has been unable to secure employment at his former occupation solely by reason of the purported expulsion of petitioner from respondent associations. It is true that by reason of petitioner's purported expulsion and as a proximate result thereof, petitioner was caused to and did suffer physical and mental pain and suffering, humiliation and anxiety. It is true that after June 26, 1953, and to the date of trial, petitioner was incapacitated for work because of illness.

XIII

It is true that the Constitutions and By-Laws of the respondent associations provide as a penalty for the offense charged against the petitioner only the punishment of fine or expulsion or both; and that said Constitutions and By-Laws provide no penalty in the form of requiring an apology; nor any fine in excess of \$50, unless the said fine is first approved by the Executive Council. It is true that the decision of said President of respondent Grand Lodge was not first approved by said Executive Council.

XIV

It is true that during the years 1950-1951-1952, while employed, petitioner's earnings were approximately \$100 per week or more.

From the foregoing findings of fact, the Court makes [fol. 50] the following

CONCLUSIONS OF LAW

I

That the purported expulsion of petitioner from the respondent associations was void and illegal in the following particulars:

1) The purported reconsideration or rescission on August 2, 1950, of the action taken on July 19, 1950, is not in accordance with the procedure set forth in the Constitutions and By-Laws of the respondent associations for the trial and punishment of members.

2) Petitioner had been on July 19, 1950, acquitted of the charges against him under the provisions of Article K of the Constitution and By-Laws of the respondent associations, and the procedural provisions of said Article K can not be avoided by resort to Robert's Rules of Order or otherwise.

3) The vote of August 2, 1950, consisting of 29 *yes* votes, 14 *no* votes and one blank vote, did not constitute a two-thirds vote required by the provisions of Article K of the Constitution and By-Laws of respondent associations.

II

That the action of the President of the Grand Lodge, purporting to modify the decision of the Local Lodge and impose a penalty of a \$500 fine and an apology, was not in accordance with the mandatory provisions of the Constitutions and By-Laws of the respondent associations in that

1) The only penalty provided for the offense with which petitioner was charged in the said Constitutions and By-Laws is the penalty of fine or expulsion or both.

2) Without prior authorization by the Executive Council no fine in excess \$50 is authorized by said Constitutions and By-Laws.

3) The only proper action that could have been taken by the said President of the Grand Lodge as an appellate tribunal was to reverse the Local Lodge upon the ground that prescribed constitutional procedures had not been followed.

III

That the action of the Executive Committee of respondent Grand Lodge purporting to affirm the decision of the President of the Grand Lodge was void and illegal for the same reasons as those assigned above with regard to the decision of the President of the Grand Lodge.

IV

That petitioner's failure to pursue further appellate remedies within the respondent associations is excused by (1) the associations' violations of their Constitutions and By-Laws, and (2) no adequate remedy by further appeal was available to petitioner by reason of the requirement that before further appeals could be prosecuted the penalty imposed, to wit, payment of the \$500 fine and apologizing to the respondent Truax must be executed by petitioner.

[fol. 52]

V

That by reason of the purported expulsion of petitioner by respondents, and each of them, petitioner sustained wage

loss in the sum of \$6,800 up to the date of his incapacitating illness. That unless and until he is restored to his rights and privileges in the respondent associations and reinstated to membership therein, he may suffer further damages by way of wage loss and otherwise, and this Court has continuing jurisdiction to award such further damages as may in the future be suffered by petitioner until he is actually restored and reinstated as aforesaid.

VI

That by reason of the purported expulsion of petitioner by respondents, and each of them, the petitioner has suffered grievous physical and mental pain and suffering, humiliation, anxiety and degradation. That the sum of \$2500 is adequate compensation therefore, up to the date of judgment herein, and this Court has continuing jurisdiction to award such further damages as may in the future be suffered by petitioner until he is actually restored and reinstated as aforesaid.

VII

That there was no evidence of malice or fraud on the part of respondents, and petitioner is not entitled to exemplary damages.

[fol. 53]

VIII

That petitioner has no speedy and adequate remedy at law, and is entitled to a writ of mandate directed to the respondents, and each of them, requiring that petitioner be forthwith restored to all of his rights and privileges in the respondent associations and to reinstatement as a member in good standing thereof, without payment of any fine or the statement of apology to the respondent Truax or any other person.

IX

Petitioner is entitled to a judgment against respondents, and each of them, for damages in the sum of \$6,800 for lost wages, plus \$2,500 as damages for mental and physical pain, suffering, anxiety, humiliation and degradation, for

his necessary costs expended in this action, and for the writ of mandate as aforesaid.

Let judgment be entered accordingly.

Dated: *July 29, 1954* .

/s/ John B. Molinari, Judge of the Superior Court.

[fol. 54]

[File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
MINUTE ORDER SETTLING AND APPROVING FINDINGS OF
FACT—*Jul. 29, 1954*

In this cause, the Court ordered findings of fact settled and approved.

[fol. 55]

[File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
JUDGMENT—*July 29, 1954*

The above-entitled cause came on for trial before the Court sitting without a jury on the 25th day of August, 1953, and again on the 3rd day of February, 1954, and evidence having been received and memoranda of law having been thereafter submitted to the Court and the cause submitted, and the Court having issued its memorandum of decision and having heretofore made and caused to be filed herein its written findings of fact and conclusions of law, and being fully advised:

Wherefore, by reason of the law and the findings of fact aforesaid, it is ordered, adjudged and decreed that petitioner have and recover from the respondents, and each of them, the sum of Sixty-Eight Hundred Dollars (\$6,800) as damages for lost wages, and the sum of Twenty-Five Hundred Dollars (\$2,500) as damages for grievous physical and mental pain and suffering, humiliation, anxiety and degradation, with interest thereon at the rate of seven (7) per centum per annum from the date hereof until paid,

[fol. 56] together with petitioner's costs and disbursements incurred in said action amounting to the sum of \$.....

It is further ordered that a peremptory writ of mandate issue forthwith to respondents, and each of them, directing them to forthwith restore petitioner to all his rights and privileges in the respondent associations and to forthwith reinstate petitioner as a member in good standing thereof, without payment of any fine or the statement of any apology or other condition.

It is further ordered that this Court retains continuing jurisdiction of this cause for the purpose of awarding additional damages or making further orders herein until this judgment and the said peremptory writ of mandate shall have been fully complied with.

Dated: July 29, 1954.

/s/ John B. Molinari, Judge of the Superior Court.

[fol. 57] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

NOTICE OF ENTRY OF JUDGMENT—July 30, 1954

To the respondents above named and to Messrs. Phoenix and Kennedy, their counsel:

You will each please take notice that on July 29, 1954, the Hon. John B. Molinari, Judge of the above-entitled Court, made and caused to be filed and entered herein written findings of fact and conclusions of law, and on said date judgment was entered herein in favor of petitioner Marcos Gonzales and against respondents.

Dated: July 30, 1954.

Gladstein, Andersen & Leonard, by /s/ Lloyd E. McMurray, Attorneys for Petitioner.

[fol. 58] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

PEREMPTORY WRIT OF MANDATE—July 29, 1954

TO: INTERNATIONAL ASSOCIATION OF MACHINISTS, an unincorporated association; CHARLES TRUAX, THOMAS E. McSHANE, and A. C. McGRAW, as International Representatives thereof;

INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL LODGE No. 68, an unincorporated association; ROBERT ROLLER, as President of said Local Lodge; REESE CONTE, as Secretary of said Local Lodge; EDWARD PECK, as Treasurer of said Local Lodge; and their successors or assigns, if any:

In the above-entitled matter, petitioner herein having filed his duly verified petition for writ of mandate, and an alternative writ of mandate and order to show cause having issued herein, and, upon the hearing of said order to show cause so issued in connection with said alternative writ of mandate in the above-entitled matter, it appearing to the above-entitled Court that a peremptory writ of mandate should issue in the premises and that said petitioner has no other plain, speedy, or adequate remedy in the ordinary course of law;

Now, therefore, You, the said International Association of Machinists, Charles Truax, Thomas E. McShane, A. C. [fol. 59] McGraw, International Association of Machinists, Local Lodge No. 68. Robert Roller, Reese Conte and Edward Peck, and any successors or assigns of the foregoing, are hereby commanded to restore to Marcos Gonzales, petitioner herein, forthwith, all of his rights and privileges in the said International Association of Machinists and International Association of Machinists, Local Lodge No. 68, and reinstate said petitioner as a member in good standing thereof without payment of any fine or the statement of any apology to the respondent Truax or to any other person.

Witness the Honorable John B. Molinari, Judge of the Superior Court of the State of California, in and for the City and County of San Francisco.

Attest my hand and the seal of said Court, this 29th day of *July*, 1954.

/s/ Martin Mongan, Clerk, /s/ by E. Wall, Deputy Clerk.

(SEAL)

[fol. A] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO, DEPARTMENT 16.

No. 423,147

HON. JOHN B. MOLINARI, Judge.

MARCOS GONZALEZ; Petitioner,

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS, an unincorporated association; CHARLES TRUAX, individually and as International Representative thereof; THOMAS E. McSHANE and A. C. McGRAW, as International Representatives thereof; INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL LODGE No. 68, an unincorporated association; ROBERT ROLLER, as president of said Local Lodge; REESE CONTE, as Secretary of said Local Lodge; EDWARD PECK, as Treasurer of said Local Lodge; FIRST DOE, SECOND DOE, THIRD DOE, FOURTH DOE AND FIFTH DOE, Respondents.

Reporter's Transcript of Proceedings

APPEARANCES:

For the Petitioner:

Messrs. Gladstein, Andersen & Leonard, 240 Montgomery Street, San Francisco, Calif., by Lloyd E. McMurray, Esq.

For the Respondents: Messrs. Phoenix & Kennedy, 2395 Broadway, Redwood City, Calif., by Eugene K. Kennedy, Esq.

[fol. 1]

August 25, 1953, 10:00 A.M.

The Court: All right, Counsel, ready to proceed?

Mr. McMurray: Yes, your Honor.

Mr. Kennedy: Yes, your Honor.

OPENING STATEMENT BY MR. McMURRAY

Mr. McMurray: Your Honor, by way of opening statement, I will try to clarify and clearly state the issues, and what Plaintiff intends to show.

This is an action for a Writ of Mandate seeking an order of the Court that Plaintiff be reinstated in the International Association of Machinists, Local Lodge No. 68, and also seeking damages for his lost wages during the period when he has been unable to work because of his wrongful expulsion.

The parties are the Plaintiff Marcos Gonzales, and the International Association of Machinists, an unincorporated association; Charles Truax, individually and as International Representative thereof; Thomas E. McShane and A. C. McGraw, as international Representatives thereof. Since the Complaint was filed, there have been new officers elected, but I understand it to be the position of the Respondents that the Lodge is taking this from the answer that has been filed, that the Lodge—Local Lodge is answering, and that the fact that the named Defendants, the named Respondents are sued in the representative capacity. The change will make no difference in the possible outcome of the action.

[fol. 2] The case arises out of a matter that goes back to 1948, your Honor, and we will show by way of background in order to enable the Court to understand the situation very briefly, that in 1948, or prior to 1948, one of the Defendants who has not been served and as to which the case is not at issue, Charles Truax, was appointed as the International Representative to take control of the Local Lodge. He was appointed by the International President and the autonomy of the Local Lodge was terminated; the affairs of the Lodge were placed entirely in the hands of Truax. That under Truax's control a division arose within the Lodge,

many members of the Lodge being opposed to Truax's policies, and some members of the Lodge being in favor of Truax's policies. That among those who were opposed to Truax was the plaintiff Marcos Gonzales.

In October, 1948, on October 5th, the Plaintiff had occasion to question one Kenneth Nelson in a meeting of the Lodge as to his right to be in the Lodge, or to be in the meeting. That he was told that this Nelson had been brought into the Lodge by Truax, and then at a subsequent meeting he was beaten, or immediately after the subsequent meeting, on October 28th, the Plaintiff was beaten by Nelson and some others, and severely injured.

As a result of that beating, he filed a suit against Nelson and Truax, and in that action it was tried in the Superior Court here, a judgment of non suit was returned against [fol. 3] Truax and a verdict of \$20,000 which was reduced to \$10,000—was returned against Nelson, and in favor of the Plaintiff Gonzales. When those cases had been tried—rather several trials had been held, and the final result was then a \$10,000 judgment in favor of the Plaintiff against Nelson, the Truax—the Grand Lodge Representative who then still controlled the Local, filed charges against the Plaintiff under the rules and regulations governing the Local and the International Lodges. The charge alleged that in brief, that the Plaintiff Marcos Gonzales had made false and malicious statements about an officer of the Lodge, to wit, Truax, and brought the Lodge into disrepute. These charges were tried before a committee composed almost entirely of persons who were known to be and who were in fact members of what we call the Truax clique, and opposed to Gonzales, and other people who agreed with Gonzales about the policies of the union, one of the members of the trial committee was a man who had run against Gonzales in election for an office in the Local Lodge, another one was one of them who had assisted Nelson in the bodily assault against Gonzales, and another one was one who testified—two others were among those who testified on behalf of Nelson at the trial of the assault and battery case.

The evidence introduced at the hearing consisted of a copy of the Complaint together with a statement to which Mr. Gonzales stipulated that the result was a judgment of

[fol. 4] non suit as to the Defendant Truax. He was an instigator in the trial within the union, and the testimony of Nelson that he had not been directed to beat up Gonzales by Truax, the Trial Committee returned, we will show, a decision against Gonzales and recommended his expulsion from the union.

In accordance with the regular procedure set forth in the Constitution of the International and the Local, the recommendations of the Trial Committee was voted upon by a secret ballot, and the decision was against the recommendation of the Trial Committee. After the meeting as Gonzales was leaving the hall with some friends, Nelson and several other persons whom he did not recognize, attempted to beat him up again and followed him onto a bus. One of Gonzales' friends told the bus driver to hold the bus while he got a policeman. He got a policeman and the policeman took Nelson and the other men who had been chasing Gonzales off the bus, and the policeman escorted Gonzales downtown where he was safe.

At the following meeting, Gonzales and his friends did not appear because they were afraid they'd be beaten up, and at that meeting a motion was made by the—one of the members of the trial committee, to reconsider the vote that had been taken on the Trial Committee's action, recommendation at the previous meeting. At this meeting, the motion to reconsider was carried, a new vote was had, and the result was in favor of the Trial Committee's recommendation, ordering Gonzales to be expelled from the Lodge. However, [fol. 5] in the meantime, Truax had taken an appeal from the decision of the Local Lodge which had at first rejected the Trial Committee's recommendation; he had taken an appeal in accordance with the rules of the Lodge, to the International President. After the Lodge, the Local Lodge had reconsidered the matter and voted to expel Gonzales, this appeal was withdrawn and Gonzales appealed. The International President sustained the decision, but modified it, and held in a written opinion which will be introduced, that while the charge was sustained by the evidence, the punishment was too severe; that it should be reduced to a fine of \$500.

He imposed this punishment, and an appeal was taken by Gonzales to the Executive Council in accordance with the rules of the order. The Executive Council, however, affirmed the decision of the President. One further appeal would lie under the rules of the order, and that is to the membership through a referendum vote, but this appeal was not taken because of the violation from the beginning to the end of the procedure of the rules of the order, as set forth in the Constitution and by laws.

After the decision against Gonzales, the local union refused at first to accept his dues. It was then told by the International President, that during the pendency of appeal the Plaintiff had a right to pay his dues, and the dues were accepted for a time, but finally when the \$500 fine had been imposed, the Local Lodge informed the Plaintiff that [fol. 6] it would no longer accept his dues until he paid his fine. Coupled with the fine, I should say, was that he apologize to Truax. The Plaintiff has refused either to apologize to Truax or to pay the fine. The Plaintiff, after he was unable to pay his Local Lodge, sought his work as he has been doing for about fifteen years as a marine machinist in San Francisco. As a marine machinist, his work is primarily repair work on vessels, ocean going vessels, that come into repair yards in the area. As a marine machinist, he earns not less than a hundred dollars a week and particularly since marine work is frequently work that has to be done in a great hurry, men are kept on long periods on the job, and they receive overtime, double time, and large sums in payment for their work. They earn frequently far in excess of a hundred dollars per week.

Since March of 1952, however, the Plaintiff has been unable to obtain any work because everytime he applies for a job, he is told to go to the hall to get a clearance, and when he goes to the Local Lodge hall he is told that no clearance can be given until he pays the fine and apologizes to Truax, and is reinstated as a member; therefore, he has been unable to support himself by his earnings from March of 1952 to the present date; and the Plaintiff will ask damages to compensate him for his lost wages during that period.

The Plaintiff's theory is that the expulsion from the Local Lodge was illegal, in a number of respects. First of all, that the Trial Committee was a biased and unfair [fol. 7] Trial Committee, and was decidedly appointed to be such. Secondly, that the charges themselves were based upon the filing of a Complaint in the Superior Court, and upon the rules of that action, that this did not constitute an offense under the laws of the Lodge, that no other evidence was introduced which purported to justify the expulsion but the copy of the Complaint and the stipulation regarding the results of the Trial in the Superior Court. Third, that the decision of the local union, when it first voted against the Trial Committee's recommendation was final, that no reconsideration could properly be had. Fourth, that if any reconsideration could be had, under the laws of the Local Lodge, it was improperly done, and the Plaintiff was denied the right to have the proper procedure followed. Next, that the fine imposed by the International President was in violation of the rules of the order which provide that no fine of more than \$50 may be imposed without prior concurrence by the Executive Council of the International Lodge; but here, the fine was first imposed by the International President and later this fine was concurred in by the Executive Council. So that the procedure followed was not the procedure set forth in the rules of the order, and under a well established rule, the Plaintiff was denied his property right in those rules, and his right to have those rules followed; and furthermore, since he was expelled because of what he said in bringing an action against Truax and Nelson, he was deprived of his right of [fol. 8] free speech, and his right to resort to the courts of the State of California for regress when he has been wronged.

And that, I think, outlines our case, fully, your Honor.

Mr. Kennedy: Your Honor, unless there is a desire indicated on your part, the Defendant would rather reserve his opening statement.

The Court: All right, proceed with your evidence.

Mr. McMurray: Mr. Gonzales, will you take the stand, please.

MARCOS GONZALES, the Petitioner, called as a witness in his own behalf, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

The Clerk: What is your name?

The Witness: Marcos Gonzales.

The Clerk: Where do you live?

The Witness: 2032 Palou Avenue.

Direct examination.

By Mr. McMurray:

Q. Mr. Gonzales, is your first name spelled M-a-r-c-o-s or u-s (Spelling)?

A. C-o-s (Spelling).

Q. You are the Plaintiff in this case, are you not, Mr. Gonzales?

A. Yes.

Q. And you are, you have been a member of the International Association of Machinists and of Local Lodge 68, [fol. 9] in San Francisco, have you?

A. Yes.

Q. How long have you been a machinist?

A. Oh, about—I have been a machinist since 1914.

Q. And how long have you been a marine machinist?

A. Oh, about fifteen or eighteen years, that's counting my sea experience, going to sea.

Q. And how long have you been working as a marine machinist in San Francisco? A. Twelve years.

Q. Now, during that period in San Francisco, working as a marine machinist, how did you obtain employment, through what medium or agency?

A. Through the office clearance; that is, at the union hall.

Q. The union hall?

A. Yes.

Q. Where is that hall?

A. At 10th and Capp Street, labor temple.

Q. And you held a book in that union, did you?

A. Yes, sir.

Q. As a member of the union?

A. Yes, sir.

Q. Now, about 1946, was there some change in the position of that union with regard to the autonomy?

A. Yes, the Grand Lodge appointed one of the Grand Lodge representatives to take the Lodge over. We were just over a strike at that time. We had gone on strike in '45, around October, and the strike ended sometime in March, 1946.

Q. And who was the representative appointed to take over the union?

A. Charles Truax.

[fol. 10] Q. Now, after Truax was appointed to take over the union, were you active in the affairs of the Union?

A. Yes, sir, I had been a shop steward for the union for quite some time prior to the Lodge being taken over by the Grand Lodge.

Q. And after it was taken over by the Grand Lodge, did you continue to be active in the affairs of the union, the local?

A. Yes, sir.

Q. Did you hold any office in the local union?

A. Well, I was a shop steward right along, shop steward and—

Q. Were you a member of any committee?

A. I was on the Policy Committee.

Q. What was the Policy Committee's function?

A. That was examining all new applicants that come into the local.

Q. Examining them in what respect?

A. As to their qualifications as machinists.

Q. And were you a trustee of the Local Lodge?

A. I was elected a trustee in '49.

Q. In 1949?

A. Yes, '49, I think; I am not quite sure, but I believe it was about 1949.

Q. And did you regularly attend the meetings of the Local Lodge?

A. I did, Executive Board meetings and also I attended—

Q. Were you a member of the Executive Board?

A. Yes, sir.

[fol. 11] Q. When were you a member of the Executive Board?

A. In '49.

Q. Now, in 1948, in October of that year, did you have occasion to examine the applications for membership of certain persons seeking to become members of the Local Lodge?

A. Yes.

Q. And among those was one, Nelson?

A. Yes.

Q. What was his first name?

A. Kenneth.

Q. Kenneth Nelson?

A. Yes.

Q. Now, with regard to October 4th, 1948, did you examine his application at that time?

A. Yes, sir.

Q. And did you speak to him about his qualifications?

A. Yes, sir.

Mr. Kennedy: If your Honor please, if I may, I am going to object to any further interrogation with respect to Nelson, as I can't see where it would have any bearing on the issues as framed by the Pleadings. The issues, as I see them, is whether or not Plaintiff was given a fair trial and what damages he suffered, if any. Now, I'd like to reiterate, if I may, I have raised this point again in the motion to strike which I have filed, we contended that the allegation concerning Kenneth Nelson should be stricken, inasmuch as it came out of the trial, of the civil trial of Kenneth Nelson, has no demonstrative bearing on the issues at all, that I am aware of, and for that reason I would like [fol. 12] to state that I am objecting to any interrogation with respect to the Plaintiff and his activities in connection with Kenneth Nelson.

The Court: I understand that the basis for the original charges, as contended by the Petitioner in this case, was the Complaint filed in the Superior Court against Nelson and Truax, made certain allegations about an assault, and that Nelson was apparently the agent or instigated by Truax, and that was the basis of these proceedings. Isn't that your contention?

Mr. McMurray: Yes, your Honor.

Mr. Kennedy: My understanding, if I may just say this final thing, was that the charges were based on allegations contained in the Complaint rather than the Complaint itself, and I think that would indicate the immateriality of Nelson's part in the picture; however, that may be in controversy, and if so, why it is one of the issues.

The Court: I will overrule the objection at this time.

By Mr. McMurray:

Q. You say that you did examine Kenneth Nelson as to his qualifications as a machinist, is that right?

A. Yes.

Q. And in what capacity were you acting when you examined him?

A. Policy Committee.

Q. As a member of the Policy Committee?

A. Yes.

Q. And as a member of the Policy Committee, did you [fol. 13] have the duty and the authority to make some recommendations with regard to applicants whom you examined?

A. Yes, sir.

Q. And did you make any recommendation with regard to Nelson?

A. I objected to taking him in, because he didn't—well, in the first place, we had too many helpers on the program; next, he wasn't competent; and next, I knew the purpose he was coming in the union for.

Q. And you decided after examining him that he was not competent?

A. Yes.

Q. And that you knew for what purpose he was coming into the union, is that right?

A. Yes.

Q. And did you issue to him any sort of a membership book or any other sign of membership in the union?

A. No, sir.

Q. And was that your function to issue membership cards to applicants whom you found qualified?

A. No, I made my recommendations on the applications,

and thirty day probation—you had to wait thirty days probation and if they qualified, they were then given their books in good standing. In other words, they come back, and they were initiated thirty days after.

Q. You made a recommendation against his being admitted, is that right?

A. Yes, but I was overruled. They put it over anyway. That is the Business Agent, and the Dispatcher said, "well, Charlie Truax wanted him in and that is all."

[fol. 14] Mr. Kennedy: Just a minute, I move to strike that as hearsay.

The Court: It is stricken.

By Mr. McMurray:

Q. Then the next day, on October 5th, 1948, was there a meeting of the Local Lodge?

A. Yes, sir.

Q. And did you attend that meeting?

A. Yes, sir.

Q. And did Kenneth Nelson attend that meeting?

A. Yes, sir.

Q. Did you have some conversation with him?

A. After the meeting I did.

Q. And what was the subject of your conversation?

A. Well, my attention was called by my colleague, Ed Peck—

Mr. Kennedy: Well, excuse me again, I am forced to object to these conversations that are not binding on any of the Defendants here, your Honor, outside of their presence. I don't think there is any foundation shown, at least that it was—

The Court: Sustained.

By Mr. McMurray:

Q. The question was, what was the subject of your conversation, what were you talking about?

A. Who brought him in the union or who gave him the book.

Mr. Kennedy: I object to that as irrelevant, under the posture of the record, the subject matter. It has no bearing, [fol. 15] if the conversation can't be shown.

The Court: Well, can't we—is it necessary to go into the background of the altercation between Nelson and this man? Because that is probably a matter that neither one of you have any dispute about, that that occurred.

Mr. McMurray: I don't intend to go into it at any length at all, your Honor. I just wanted the bare bones of the background in here.

Q. Then on October 20th, 1948, Mr. Gonzales, did anything unusual occur?

A. Yes, quite a disorder in the union that was caused by Charlie Truax.

Mr. Kennedy: Just a minute, I move to strike that as a conclusion.

The Court: It is stricken.

By Mr. McMurray:

Q. Was there a meeting of the union on that day?

A. Yes, sir.

Q. And did anything unusual happen to you?

A. Yes.

Q. What was that?

A. I was assaulted.

Q. And by whom were you assaulted?

A. Kenneth Nelson.

Q. Now, as a result of that assault, and other matters, did you consult an attorney sometime later?

A. Yes.

Q. And that attorney was Herbert Resner, was he not?

A. That's right.

[fol. 16] Q. And Mr. Resner filed a suit on your behalf in March of 1949, did he?

A. Yes.

Q. And that suit was filed in the Superior Court in San Francisco here, was it not?

A. Yes.

Q. Now, following the trial of that action, you were ac-

cused by Charles Truax in a—by a written accusation filed against you in the local lodge, is that correct?

A. Yes.

Q. And a trial Committee was appointed to hear the charges against you, is that so?

A. Yes, sir.

Q. Now then, do you remember who was the President of that Trial Committee or the Chairman of that Trial Committee?

A. Yes, Ralph Pointer was the Chairman.

Q. By whom was he appointed?

A. By the President.

Q. And who was the President?

A. Fiber.

Q. Fiber, do you know his first name?

A. I forgot his first name.

Q. Now, Ralph Pointer was a member of the Lodge, I take it?

A. Yes.

Q. And did you know him?

A. Yes, I knew him well.

Q. And had he been engaged in any activity in which you had also been engaged in the Local Lodge?

A. Oh, yes, he was past president.

Q. Past president of the Lodge?

A. Yes.

[fol. 17] Q. And in what activity had you been engaged in, that he had also been engaged in, in the Lodge?

A. Well, he was one that testified against me in court.

Q. He had testified against you, you say?

A. Yes.

Q. In the trial, that is, of the action against Truax and Nelson, is that right?

A. That's right.

Q. And who else was a member of that committee?

A. Niles, Speed.

Q. That is N-i-l-e-s, S-p-e-e-d (Spelling)?

A. Yes, Niles Speed.

Q. Niles Speed. Had he testified in the case against Nelson and Truax?

A. Yes.

Q. In whose behalf did he testify?

A. Nelson's.

Q. And who else was a member of the Trial Committee?

A. Greenfield—Marcus Greenfield.

Q. And who else?

A. Gino Belluomini.

Q. How do you spell that?

A. That is Gino—

Q. G-i-n-o (Spelling) and B-e-l-l-u-o-m-i-n-i (Spelling).

What about Mr. Belluomini, did you know him?

A. Yes.

Q. How did you know him?

A. Well, he was—we were both running for election as trustees.

Q. And you were opponents in that election, were you?

[fol. 18] A. Yes.

Q. And who won the election?

A. I won the election.

Q. And Ralph—Rex Rener, was he a member of the Trial Committee also? A. Yes, sir.

Q. Did you know him?

A. I had seen him in the meetings.

The Court: What is his name?

The Witness: Rex Rener.

Mr. McMurray: R-e-n-n-e-r (Spelling). Now, the trial was held on the charges filed by Truax on July 7th, 1950, in the evening, is that correct?

A. That's right.

Q. And at that trial was a stenographic record kept of the testimony given?

A. Yes.

Mr. McMurray: I think it will be stipulated, your Honor, that this document which I am offering in evidence is the stenographic record, or report of the trial we have just been hearing about.

The Court: All right, it's admitted in evidence then as Petitioner's No. 1.

The Clerk: Plaintiff's 1.

(Whereupon, the stenographic record referred to was marked Petitioner's Exhibit No. 1 and admitted in evidence.)

By Mr. McMurray:

Q. Now, Mr. Gonzales, during the course of that trial, Charles Truax appeared as Plaintiff against you, is that [fol. 19] correct?

A. Yes.

Q. And Kenneth Nelson appeared as a witness on his behalf, is that right?

A. Yes.

Q. And during that trial you were questioned with regard to your reason for alleging in the action filed in the Superior Court that—

The Court: Counsel, may I interrupt?

Mr. McMurray: Yes.

The Court: Was this before the trial of this action in the Superior Court?

Mr. McMurray: It was after the trial.

The Court: After that trial? All right.

Mr. McMurray: After that had been completed, you were asked by Charles Truax as to the basis for your allegations in the Complaint that Nelson and Truax had assaulted you, is that correct?

A. Yes.

Q. And all of the evidence that was before the—or all the evidence introduced in the trial was introduced there on that one evening, was it not?

A. That's right.

Q. Now, Mr. Gonzales, after the trial proper was concluded, then the trial committee retired to consider its decision, is that right?

A. Correct.

Q. And a report or determination of the Trial Committee was returned to the local union, is that correct?

A. That's correct.

Q. The local lodge has regular meetings does it not?
[fol. 20] A. Yes.

Q. And how often are they held?

A. It is twice a month.

Q. Twice a month?

A. Yes.

Q. And regular minutes are kept of the meetings and what occurs in the meetings, are they?

A. Yes, sir.

Mr. McMurray: I think, your Honor, it will be stipulated that the documents I hold here are photostatic copies of the minutes of the regular meeting of the Lodge, Lodge 68, IA of M on July 19th, 1950. I will offer that as Plaintiff's next in order.

The Court: Plaintiff's 2, it will be so admitted in evidence.

Mr. McMurray: And I'd like to call the Court's attention to a particular portion of that exhibit, your Honor, and to read this portion of it, portion is headed:

"Committee Reports.

"Brother Poynor read report of the Trial Committee, appointed to hear charges preferred against Brother Marcos Gonzales by Brother Charles Truax.

"The verdict of the Trial Committee was 'guilty as charged' in violation of Article XXV Section 1, of the Grand Lodge Constitution.

"In accordance with the Grand Lodge Constitution, [fol. 21] the Chair appointed a balloting Committee as follows—Brothers Gus Miller, Manuel Maderios, and William Davis.

"Ballots were distributed, cast and counted with results as follows. In favor of sustaining verdict of the Committee, 31"—which has evidently been placed there after an erasure of something which was there prior to that, then—

"... against, 43, 3 blanks.

"Count of house showed 77 present."

Your Honor may want to examine that. I don't think it is particularly significant, but it is evidence that there was some sort of an erasure.

Q. Were you present at that first meeting?

A. Second meeting, the vote was taken.

Q. Second meeting the vote was taken?

A. Yes, it was taken.

Q. Did anything unusual occur on that evening after the meeting?

A. Yes.

Q. What was that?

A. Well, no sooner I got to the door and I was chased downstairs, and not only me, me and a friend of mine, we jumped on the bus.

Q. Who chased you?

A. Three men.

Q. Did you know any of them?

A. Yes, I recognized one of them.

Q. Who was that?

A. Kenneth Nelson.

[fol. 22] Q. When you say you were chased, what do you mean?

A. Well, they run after me, they want to beat me up on the street, because prior to that, this fellow jumped up in the meeting when I had protested—they wouldn't let me get up, and explain why I had claimed the Trial Committee was prejudiced, and they wouldn't let me say nothing.

Mr. Kennedy: May I interrupt you please, Mr. Gonzales? Your Honor, unless Counsel states that he is going to connect this up with some of the Respondents here, I want to renew my motion to strike.

Mr. McMurray: I am sure—I couldn't understand all that Counsel said, connect it up with what?

Mr. Kennedy: One of the Respondents in this action. I want to move to strike the testimony.

Mr. McMurray: Oh, it will be connected up with the Respondents, International Association and Local Lodge 68, your Honor.

The Court: Well, nothing transpired, I take it, other than this particular time?

Mr. McMurray: Except that an attempt was made to commit an assault on the Plaintiff.

Q. Were you actually struck, Mr. Gonzales?

A. He made a pass at me right in the meeting.

Q. Who did?

A. Kenneth Nelson.

Q. And then after the meeting he chased you down the stairs, is that right?

A. Yes.

[fol. 23] Q. Did he actually strike you?

A. No, well, made a swing, but he didn't hit me, but then thereafter, him and a few other fellows went after me, and I jumped on the bus for safety, and Harry Shear, went and called the policeman, and told the bus driver to hold the bus, and he got a policeman. The policeman came down the street, on the bus, took us off.

Q. A policeman got on the bus and took who off?

A. Kenneth Nelson and the other fellows off the bus.

Q. The other men that were with Kenneth Nelson?

A. Yes.

Q. What did you do then?

A. We asked for some protection so he walked me up the other block and there was two officers there and we asked one of the officers if he would ride down with us in a taxi, put us to safety, because there was a machine there with a few other guys that I was kind of leery that might trail us. So he rode down as far as Market Street, the police officer got off, and from there I got off and the other fellow kept going in the taxi.

Q. And after that did you attend the meeting held on August 12th, rather August 2nd, 1950?

A. No, sir.

Q. Why didn't you attend that meeting?

Mr. Kennedy: Object, your Honor, it is immaterial.

Mr. McMurray: I think it is material, your Honor. There [fol. 24] may be a claim that no objection was made to the procedure that was followed at the meeting of August 2nd, and I think it is proper for us to show——

The Court: The objection is overruled.

By Mr. McMurray:

Q. Why didn't you attend the meeting of August 2nd?

A. I was afraid.

Q. What were you afraid of?

A. I was afraid of being assaulted.

Mr. McMurray: Now, I have here, your Honor, what I believe Counsel will stipulate is a photostatic copy of the minutes of the regular meeting at Lodge 68, on August 2nd,

1950, and I will offer this in evidence as Plaintiff's Exhibit No. 3.

The Court: It is admitted in evidence as Plaintiff's Exhibit 3.

(Whereupon, photostatic copy of minutes referred to was marked Petitioner's Exhibit No. 3 and admitted in evidence.)

Mr. McMurray: I'd like to direct your Honor's attention to a certain portion of that exhibit. This appears in the minutes, Plaintiff's Exhibit 3, your Honor:

"Moved and seconded that Lodge rescind its action of July 19th, 1950, taken on report of the Trial Committee which acted on the case of Brother Marcos Gonzales.

"Standing vote showed 38 yes, 4 no.
[fol. 25] "Carrying the motion.

"Moved and seconded that the verdict of guilty as charged in the report of the Trial Committee in the case of Brother Marcos Gonzales, made to the Lodge at the regular meeting of July 19th, 1950, be concurred in.

"Questions regarding evidence at the trial were asked of members of the Trial Committee and satisfactorily answered.

"Chair appointed balloting committee of Brothers Bringham, Gutfeld, and Miller.

"Secret ballot taken with count showing 31 yes, 12 no, 2 blanks.

"Thereby concurring in Trial Committee's verdict of guilty as charged.

"Brother Poyner stated that the recommendation of the Trial Committee was that Brother Marcos Gonzales be expelled from membership in the International Association of Machinists.

"Chair appointed ballot committee of Brothers Bringham, Gutfeld, and Miller.

"Secret ballot taken with count showing 29 yes, 14 no, 1 blank. House count 44. Thereby concurring in the recommendation of the Trial Committee that Gonzales be expelled from the IA of M."

Are we going to take a break this morning?
[fol. 26] The Court: Maybe this would be a good time to do it. We will have a recess now.

(Whereupon, a short recess was taken.)

MARCOS GONZALES (Resuming).

Direct examination (Continued).

By Mr. McMurray:

Q. Mr. Gonzales, you were notified that your expulsion from the union had been voted by the membership, were you?

A. Yes.

Q. And you then consulted your attorney, Mr. Resner, did you?

A. Yes.

Q. And at your request, did he prepare and send a letter to Mr. A. J. Hayes, the International President of the International Association of Machinists?

A. Yes, sir.

Q. I show you a copy of a letter dated August 16th, 1950, signed by Herbert Resner, and ask you if that is a copy of the letter which he sent, which he gave to you?

A. Yes.

Mr. McMurray: I will offer that in evidence as Plaintiff's Exhibit next in order, your Honor, and state the purpose of the offer; in this letter Mr. Resner said among other things:

"Under any circumstances it seems to me that there is no justification at all and no support in your Constitution for a second action of the Union on August 2nd, after Mr. Gonzales was vindicated on July 19th."

[fol. 27] And the purpose of this is to show that in the appeal filed by the Plaintiff, in the union, the legality of the vote on August 2nd, was raised by him.

Mr. Kennedy: Are you through, Counsel?

Mr. McMurray: Yes.

Mr. Kennedy: Your Honor, I would like to note an objection to that document on these grounds: It contains a large amount of conclusions based on hearsay, no doubt, which we regard as prejudicial and more than that we feel that it is immaterial because the records will show, and there are available here, other documents showing that Plaintiff did appeal his—the result of the local Lodge action, and we feel that is the only materiality.

The Court: You are not contending, Counsel, that this letter is any part of any appeal procedure set up by the bylaws of the rules or the Constitution of any of these unions?

Mr. McMurray: No, perhaps the materiality of it will appear a little better from the next exhibit.

The Court: Is your only purpose to show that Mr. Gonzales did protest to the International, the matter of the legality of the reconsideration?

Mr. McMurray: That is the only purpose.

The Court: Perhaps without putting the letter in, Counsel will stipulate that he did protest, for whatever it might [fol. 28] be worth.

Mr. Kennedy: Yes, your Honor, except that we do have available here, and I believe Counsel has too, contemporaneous documents showing an appeal and a protest, and for that reason I feel that it would be prejudicial to introduce a document of that nature.

The Court: Well I think perhaps your objection is well taken.

Mr. McMurray: As I understand it, it is stipulated that the legality of the action taken on July 2nd, was raised in the appeal by Mr. Gonzales.

Mr. Kennedy: Yes, we will stipulate to that.

The Court: If you want, we will mark this for the time being as Plaintiff's Exhibit next in order for identification.

Mr. McMurray: Perhaps it should be.

The Court: And if it should be material, you will renew the offer.

The Clerk: Plaintiff's 4 for identification.

(Whereupon, the letter dated August 16, 1950, referred to, was marked Petitioner's Exhibit No. 4 for identification.)

Mr. McMurray: I will then offer, your Honor, a document dated November 13th, 1950, on the letter head of the International Association of Machinists, a hectographed document, I suppose it is, bearing the signature or purported signature of A. J. Hayes, international President; [fol. 29] there is no question, I take it, of the authenticity of this document, and this contains, your Honor, the decision of the International President on the appeal taken by Mr. Gonzales. It also is offered to show that an appeal was taken after July—after—wait a minute—I'll have to get these dates straight. I get them mixed up. After July 20th, an appeal was taken on July 22nd, by Charles Truax from the decision of July 20th, when the union voted against the recommendations of the Trial Committee and that this appeal was then dropped by Charles Truax when the reconsideration had taken place on August 2nd. It is offered, your Honor, for the decision appearing on the last page as follows:

"Although the evidence shows full guilt on the part of Brother Gonzales, resulting in harm to Brother Truax and the organization to which both the Plaintiff and Defendant belong, I am of the opinion that the decision of the Lodge to expell Defendant Gonzales from membership was too severe, and I hereby modify the penalty as follows: Defendant Gonzales shall pay \$500 fine to Lodge No. 68 and shall make a complete and appropriate apology to Brother Truax, furnishing a copy of such apology to this office. My decision in this case is based upon the entire record and would have been exactly the same regardless of the fact that the Lodge, at its meeting on August 2nd, 1950, reversed [fol. 30] the decision made on July 19th, as set forth in No. 4 above."

The Clerk: That is offered?

Mr. McMurray: That is offered.

The Court: All right, it is admitted in evidence as Plaintiff's Exhibit next in order.

The Clerk: Plaintiff's 5.

(Whereupon, letter dated November 13, 1950 referred to, was marked Petitioner's Exhibit No. 5 and admitted in evidence.)

The Clerk: This is a report, is that right, Counsel?

Mr. McMurray: Decision of the International President.

I next have a letter dated January 30th, 1951, ~~on~~ the letterhead of the International Association of Machinists, purportedly signed by Eric Peterson, General Secretary-Treasurer, which I will offer as Plaintiff's next exhibit, your Honor.

Mr. Kennedy: No objection.

The Court: It is admitted in evidence as Plaintiff's next—

The Clerk: Plaintiff's 6. That is what?

Mr. McMurray: A letter of January 30th.. I'd like to read this, your Honor. It is addressed to Mr. Marcos Gonzales, 2032 Palou Avenue, San Francisco, 24, California.

"Dear Sir: Please be referred to our letter of November [fol. 31] ber 29th, wherein we acknowledged your letter of November 16th, appealing the decision of the International President announced in his letter of November 13th, 1950, and suggesting that you submit in writing your reasons for appealing that decision.

"Inasmuch as you failed to supplement your letter of November 16th, the Executive Council, at its recent meeting, carefully appraised all of the facts as presented in the correspondence dealing with your case, and, after due deliberation, by unanimous action, voted to sustain the International President's decision.

"Accordingly, President Hayes' decision of November 13th, fining you \$500 becomes the decision of the Executive Counsel, and our records have been so indicated."

That is evidently an inadvertent slip in language.

The Court: Was there some appeal procedure provided within the local—

Mr. McMurray: All the appeal procedure was, that has been followed according to the evidence so far, to the President, international President, and then to the Executive Council.

I have next a letter of February 11th, 1952, which I will offer as Plaintiff's Exhibit No. 7. This is addressed to Mr. [fol. 32] Marcos Gonzales, and purports to be signed by

Reese Conte, Financial Secretary of Lodge No. 68, and it appears on the letterhead of San Francisco Lodge No. 68 IA of M, and it says:

"Dear Sir and Brother:

"This letter is to inform you that we can not continue to accept dues until the \$500 fine is paid to Lodge No. 68, and a complete and appropriate apology to Grand Lodge Representative Truax, furnishing a copy of such apology to International President's Office.

"This is in accordance with the decision rendered by International President A. J. Hayes on November 13th, 1950, and sustained by the Executive Council at the January 1951 meeting.

"With best wishes, I am, fraternally, Reese Conte."

The Court: It is admitted in evidence as Plaintiff's Exhibit next in order.

The Clerk: Plaintiff's 7.

(Whereupon, letter dated February 11, 1952, referred to, was marked Petitioner's Exhibit No. 7 and admitted in evidence.)

Mr. McMurray:

Q. Now, Mr. Gonzales, during the pendency of these appeals, you had been employed, had you?

A. Yes.

[fol. 33] Q. And you were working at your regular occupation as a marine machinist?

A. Yes.

Q. What were your earnings during the period in 1950, '51, and '52, when you were working as a marine machinist?

A. Well, they varied, because—oh, I was working for the General Electric Company—I averaged about \$140, \$150 a week.

Q. You were working as a marine machinist for the General Electric Company?

A. Yes.

Q. And was there—can you say what your usual earnings were per week?

A. Well, they were over a hundred dollars a week, be-

cause I couldn't very well establish the salary, because sometimes if I was working out at Fort Mason, a transport would come in, and you'd have to work two days straight, and anything over eight hours was double time, so in a short time you make close to \$200, day and a half or so.

Q. Is it fair to state that your earnings were nearly always at least \$100 per week?

A. Yes.

Q. And that they were frequently more than a hundred dollars, but less than \$200 per week?

A. Yes.

Q. Now, how long were you able to, or how long did you continue to work after February of 1952, when you were notified that your dues were no longer acceptable, and would no longer be accepted by the local union.

A. Oh, about four days, and I hurt myself on one of those tugs out at Pacific Ship Repair.

[fol. 34] Q. Had an industrial injury?

A. Yes.

Q. That disabled you for awhile, did it?

A. Yes.

Q. And when were you physically able to return to work?

A. March.

Q. March of 1952?

A. Yes, about March 4th or March 5th.

Q. And had you had a medical examination shortly before then?

A. Yes, I was given a release by Dr. Kilpatrick.

Q. Now, after March 4th, did you attempt to obtain employment as a marine machinist?

A. Yes.

Q. And were you successful?

A. No, sir.

Q. Have you been able to obtain any employment as a marine machinist from that day to the present time?

A. No, sir.

Mr. Kennedy: Excuse me, your Honor, I move to strike this on the grounds that the statement that he was unsuccessful is immaterial, unless it is shown prior what efforts were made to obtain employment; the mere statement that he was unsuccessful is meaningless unless—in itself.

Mr. McMurray: I am not attempting to put it all in by one question. We will go on.

The Court: All right, I will overrule the objection.

By Mr. McMurray:

Q. Now, did you apply to the local union for assignment [fol. 35] to a job as you had done before?

A. Yes.

Q. And to whom—to what individual did you apply?

A. Dispatcher, Barney O'Hara.

Q. What was his job?

A. Dispatching all work that come into the hall, all marine machinists; he had charge of the dispatching office.

Q. When you say work that came into the hall, what do you mean?

A. Well, all calls that come in from the outside.

Q. From the employers, you mean?

A. Yes.

Q. The ordinary practice was, there was the employers who needed machinists, would telephone the hall and ask that machinists be sent out to them, is that right?

A. That's right.

Q. And you applied to him in March of 1952, did you?

A. Yes.

Q. And what did he say?

A. Well, he couldn't dispatch me on account of the trouble I had with the organization.

Q. And did you apply to him on more than one occasion?

A. I applied regularly. I thought probably I'd get dispatched to some job that couldn't fill the bill because many a times they were calling for marine machinists and they didn't have enough to send out.

[fol. 36] Mr. Kennedy: I didn't get that.

(Pending answer read by the Reporter.)

By Mr. McMurray:

Q. So it was your action then, to apply to the dispatcher frequently?

A. Yes.

Q. Did you, as a matter of fact,—you stationed yourself

at the dispatch office, did you not, day after day on many days in March of 1952 and thereafter?

A. Yes, quite frequently I was up at the hall. Quite frequently I was up at the hall looking around to see whether I could find out whether they need machinists.

Q. Did you make any other attempts to find employment?

A. Oh, I went around a lot of shops that knew me. I'd come up to the Columbia Machine Company, Matson Navigation, and Mechanics Ship Repair, Triple A Machine Shop, and Wagner-Niehaus—in other words, I asked them if they needed the men to give me a ring. * * *

* * * * * * *

By Mr. McMurray:

Q. On these occasions when you went and applied to these various places that you have mentioned, to whom did you go? Was there some particular type of official that you went to?

[fol. 37] A. Yes, like Wagner-Niehaus, I talked to Albert Wagner, he is one of the owners, and the Columbia Machine, I talked to Mr. Pringle—he is the superintendent down there—and also Ray Mallatesta, I think he is the head time keeper—Mallaspina, he is the head time keeper there, and he used to call me at home many a times, he called me at home for marine jobs, but as it was, he asked me how I was with the union, * * *

* * * * * * *

Q. Mr. Gonzales, are you now able to, physically able to work?

A. No, sir.

Q. You are physically disabled at the present time, are you not?

A. Yes.

Q. You are now on leave from the Veterans Hospital?

A. Yes, in Livermore.

Q. And you were given leave to come here in order to testify in this trial, is that right?

A. Yes, sir.

Q. When were you incapacitated, when did you become so ill with this present illness that you were unable to work?

[fol. 38] A. June 16th.

Q. Of what year?

A. This year.

Q. Of 1953?

A. 1953.

Q. And up until that time, from about March 4th, of 1952, you were seeking employment as a marine machinist, but were unable to obtain it, is that correct?

A. Yes, sir.

Q. Now, did you seek any work outside the field of marine machinists?

A. No, sir.

Q. Will you state why?

A. Well, it was a trade that I followed all the time, and I liked it, and I always—I put in a lot of my time, I studied it, I took marine engineer in college for a year and a half, I went out as a marine engineer, and I was competent to perform them jobs; and therefore, I didn't want to go in another field.

Q. You had worked with many established firms, here, had you?

A. I knew the owners, all of them. I used to sometimes go down the hall and pick out qualified men that were marine men to do their stuff, and now since this trouble, well I couldn't do anymore of that.

Q. And as a marine machinist, you were called in frequently on rush repair jobs, were you?

A. They called me from the house, yes.

Q. And in such jobs, you would continue to work long after the eight hour regular shift, long after the eight hour [fol. 39] shift had been put in, is that right?

A. Quite often.

Q. And everything after eight hours was paid at double time, is that right?

A. Yes, sir.

Q. Now, marine machinists work is a special branch of the trade, recognized as such by your union, is it not?

A. Yes, sir.

* * * * *

Q. Mr. Gonzales, when you applied at Wagner-Niehaus for employment; you said you spoke to Mr. Wagner, was it?

A. Mr. Wagner.

Q. He is one of the owners of that concern, is he?

A. Yes.

Q. And you have worked for that firm, before, have you?

A. When they first started in.

Q. Do you remember approximately when you applied [fol. 40] to him for work? That is, since March 4th, 1952.

A. I am not quite sure, but it was in March or April, he had a big job and then I took a walk down there because at the hall I seen they were dispatching quite a number of men, and they had two or three boats. I went down there and I happened to meet Mr. Wagner.

Q. You noticed from being present at the dispatching office in the hall that men were being dispatched to Wagner-Niehaus?

A. Yes.

Q. You went down and spoke to Mr. Wagner there?

A. Yes.

Q. What did you ask him?

A. Well, first thing he asked——

Mr. Kennedy: Excuse me, Counsel, I am going to renew my objection to these conversations which are not binding on the Respondents here and they are hearsay; and we regard them as something we have to object to.

Mr. McMurray: Your Honor, in the first place, the question is as to what the Plaintiff said, not what was said to him but meeting the issue, I think that we are entitled to show these conversations and we can show by the testimony of this witness what response he got from employers from whom he sought employment, because the—his testimony about the other persons named is not offered as to the—to prove the truth of what Wagner, for example, said, but is offered for a separate purpose entirely; that is, to show [fol. 41] the result of the Plaintiff's effort to obtain employment in his trade. And so none of the objections to hearsay, none of the policy reasons why hearsay evidence is objectionable is applied here. It is not offered to prove the truth necessarily.

The Court: You are contending that this man was out of the union anyway, aren't you, Counsel?

Mr. Kennedy: We are stating he is out of the union, the advice of this line of questioning——

The Court: Is there any question about the fact that if he had been a full fledged member of the union, according to your contention, that he would have had employment?

Mr. Kennedy: That is what I was trying to raise, as a matter here, your Honor, the history will show that there may well have been—and I can't state one way or another—that there may have been reasons why certain of these employers would not want to employ Mr. Gonzales. I am not stating that they did exist, but for example, in some of the employment that he had, he had the misfortune to become injured. Now, conceivably that would be one of the grounds for refusing him employment. What we are doing here, is, we are taking Mr. Gonzales' version of a third party's statement, and the only purpose of it is to ascribe to that third party the purpose that they had in not giving him employment; and we don't have that party here, and I think that that is the danger of this type of testimony so [fol. 42] far as the Respondents are concerned.

The Court: I think your objection is well taken so far as that is concerned, but I was trying to narrow the issues down. You are making some point of the fact that even if he had been a member, there was no employment available. I think the union records would be the best records of that.

Mr. McMurray: Very well. Then I will conclude with this witness and approach that matter another way, your Honor. I may have to ask for a little time to bring in some of the employers. I had not anticipated any difficulty on this matter, the fact that—

The Court: Well, you may get a stipulation out of Counsel to the effect that employment was offered him by certain employers without going into the conversation.

Mr. McMurray: I don't think—

Mr. Kennedy: As a matter of fact, I think that is contrary to the fact. I think that he was unsuccessful in getting employment, I don't know that is—

The Court: All right, you may ascertain the facts and get into a stipulation, otherwise, it would be hearsay unless you brought in the employers.

Mr. Kennedy: If we can reach a stipulation, we will be very happy to.

Mr. McMurray: Now, Mr. Gonzales, from approximately March 4th, of 1952, to—what date was that in—June of this year?

A. June 26th.

[fol. 43] Q. June 26th of this year, you were seeking employment as a marine machinist, and you received no employment, is that correct?

A. That's right.

Q. Your sole source of support is what you earn, is that correct?

A. Yes.

Mr. McMurray: You may inquire—

[fol. 44] AFTERNOON SESSION 2:00 P. M.

The Court: Ready, Counsel?

Mr. Kennedy: Yes, your Honor. Have you any further questions?

Mr. McMurray: No, no further questions.

Cross examination.

By Mr. Kennedy:

Q. Mr. Gonzales, as a member of Lodge 68, have you had access to the Constitution of the Lodge?

A. Yes, sir.

Q. Now, I will hand you for specific reference a copy marked, or, that is, effective April 1st, 1950, and ask you if you have seen that?

A. Yes.

Q. You have seen it and you are familiar with it?

A. Yes.

Mr. Kennedy: Counsel, is there any question about this—question, as to the authenticity of the Constitution? If not, I would like—

Mr. McMurray: I have not.

Mr. Kennedy: —if not, I would like to introduce as Respondents' Exhibit 1, the Constitution of the Lodge, 68.

The Court: It will be admitted as Defendant's A.

The Clerk: Defendant's A.

(Whereupon, Constitution of Lodge 68 referred to was marked Respondents' Exhibit A and admitted in evidence.)

By Mr. Kennedy:

Q. Now, Mr. Gonzales, going first to the last employ-
[fol. 45] ment that you had, which I believe you stated was
in February, 1952—is that correct?

A. Yes.

Q. And my understanding was, if it is correct, that you
have not worked at all from March, 1952 until the present
time?

A. That's right.

Q. And I believe you also testified, did you not, that you
were injured during February, 1952, while working?

A. Pacific Ship—

Q. At Pacific Ship Repair?

A. Yes.

Q. And you also testified that you were released by Dr.
Kilpatrick on March 5th, 1952?

A. Yes.

Q. To go back to work?

A. I was released, yes, on the 4th or 5th; that's right.

Q. Did you ever make any claim that you were not able
to go back to work on that date?

A. No, sir.

Q. And with reference to your testimony about Mr.
Poynter, isn't it a fact that he merely testified in the Su-
perior Court trial that he did not know of Mr. Truax causing
any fight or disturbance on the October 25th, 1949 incident?
Wasn't that the substance of his testimony?

A. No, sir, he testified contrary.

Q. Well, what I am trying to say was that Mr. Poynter
testified that he didn't know that Mr. Truax caused any
[fol. 46] disturbance, isn't that true?

A. He testified it was caused.

Q. That Mr. Truax—

A. That Truax caused some disturbance.

Q. Do you remember what he said along that line?

A. I recollect that he claimed that Charlie was going

up to get a drink of water at the fountain, and he made a right hand swing at another one of the members—that started the trouble that evening—and he also testified about pushing me, helping one of them other fellows that caused the assault, pushing me out the door.

Q. So could you explain what you meant by your testimony that Mr. Poynter testified against you?

A. Yes.

Q. Would you explain that please?

A. Well, he testified that he—well, he contended that he did push me out the door, and with the other fellow, those other fellows implicated too.

Q. So that we will get this straight, do I understand that it is your testimony now that Mr. Poynter testified in the Superior Court action up here in the City Hall?

A. Yes sir, in both cases.

Q. And that he testified against you?

A. Yes.

Q. And by testifying against you, he testified in effect that Mr. Truax was implicated in the disturbance in which [fol. 47] you were involved?

Mr. McMurray: I will object to that as argumentative.

The Court: Sustained.

By Mr. Kennedy:

Q. Now, with reference to the testimony of Mr. Speed, Mr. Gonzales, isn't it a fact that he merely brought in some union records and read off in Court, what they showed?

A. No, sir, he testified in favor of the Defendant, Kenneth Nelson.

Mr. Kennedy: Well, I move to strike that answer, your Honor.

The Court: It is stricken.

Mr. McMurray: Your Honor, I don't see why it should be stricken. It seems to me it is responsive to the question, isn't it a fact that he brought in some records and read them, and the witness said, "No, he was testifying on behalf of Nelson."

Mr. Kennedy: I was moving on the grounds it was a conclusion and not responsive as such.

The Court: I didn't hear the "No". I will allow the "No" to remain; the rest of it is stricken.

By Mr. Kennedy:

Q. Mr. Gonzales, after the trial Committee of the local made a finding against you on August 2nd, 1950, it is a fact, is it not, that you filed some charges with the National Labor Relations Board?

[fol. 48] A. Yes, sir.

Q. And these charges were against the local union?

A. Yes, sir.

Mr. McMurray: I will object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

By Mr. Kennedy:

Q. And that you had some conferences with the representatives of the Labor Board with respect to your case?

A. Yes.

Mr. McMurray: Objected to on the same ground.

The Court: Overruled.

By Mr. Kennedy:

Q. And it is also true, is it not, that you were informed by these representatives that they couldn't find any evidence of violation of the National Labor Relations Act by the union?

A. No, sir, they told me to get a lawyer. They advised me to get a lawyer for this particular case.

Q. Well, did you get a lawyer then, Mr. Gonzales?

A. Yes, sir.

Q. And after you got a lawyer, you withdrew the charges?

A. That's right.

Q. And it is true, is it not, that among other things that you were told by the representatives of the Labor Board,

was that they couldn't find any evidence of violation on the part of the Union, isn't that true?

A. They didn't tell me that.

[fol. 49] Q. Mr. Gonzales, at this union trial it is true that you admitted in effect, did you not, that you had no evidence at all that Mr. Truax instructed Nelson to beat you?

Mr. McMurray: I will object to that. The evidence—the transcript of the trial is the best evidence of what was said there.

The Court: Sustained.

By Mr. Kennedy:

Q. One minor thing, Mr. Gonzales—your testimony about being a member of the Policy Committee, were you correct on that point, of Local 68?

A. I was on the Policy Committee, investigating committee, which is the same thing.

Q. Wasn't it the committee that passed on the applicants for membership, wasn't that the function of it?

A. Yes, sir, but I was—just two of us, Ed Peck and me.

Q. Well, it would be fair to say then that the function, your function on that committee was to determine the applicants—

A. That's right.

Q. What is your situation now, Mr. Gonzales, with respect to your health and ability to work, do you have any favorable reports?

A. I didn't hear the last part, sir.

Q. I was interested in knowing what the doctors tell you now about your ability to go to work, if anything.

A. Well, I had a conference with the doctor last week before the board, and they told me that it would take me about three or four months before I'd be rehabilitated, and [fol. 50] then they would release me from the hospital, but I could go anytime I wanted, but they told me it would be better for me to stay there and get—until I felt better.

Q. On this question of your injury at the Pacific Ship Repair, you injured your back, was it?

A. I explained that.

Q. And you had prior trouble with that, that it kept you from work, is that correct?

A. Well—

Mr. McMurray: I will object to that as going beyond the period that is material here.

Mr. Kennedy: It is just preliminary. I will withdraw that. It is not particularly important.

Q. What I am get-ting at, or trying to get at, Mr. Gonzales, that since March 5th, 1952, has your back, the condition of your back prevented you from working at anytime?

A. No, sir.

Mr. Kennedy: That is all; thank you.

Redirect examination.

By Mr. McMurray:

Q. With regard to Poynter as a member of the Trial Committee, you say that he testified in Court that he had been one of those who assaulted you at the time that Nelson did, is that right?

A. That's right.

Q. Did he volunteer that testimony or was that admitted on cross-examination?

A. That was admitted.

[fol. 51] Q. On cross-examination or direct?

A. Well, on direct and then cross; that is, on both trials he contended that he helped Nelson push me out the door.

Q. And you consulted with me when the Labor Board told you to get a lawyer, did you not?

A. Yes, sir.

Q. And I advised you to go to the Labor Board, in the first place, did I not?

A. That's right.

Q. And you discussed the matter with me and decided to drop the charges, did you not?

Mr. Kennedy: I am going to object to the leading nature of these particular questions, your Honor.

The Court: Sustained.

By Mr. McMurray:

Q. What was your reason for withdrawing the charges, Mr. Gonzales?

A. Well, I being a member of the Lodge for so long, I didn't want to jeopardize the position of our Lodge because in the past it is pretty well messed up. What I wanted to do, was not give any further trouble, bring it out in the open before the Board, so I thought it was best to drop the charges and I wrote a letter. I am quite sure I wrote a letter to A. J. Hayes, again appealing to him and telling him about the misconduct of the way the Lodge was being run by Charles Truax, and, well, he just ignored my letter.

Q. Then you did withdraw the charges?

A. Yes.

[fol. 52] Mr. McMurray: No further questions. That is all, Mr. Gonzales.

Mr. Kennedy: I'd like to offer the copies of the charge of withdrawal, and the reason that I am offering them is purely for the convenience of referring later to particular sections, in the event you want to argue. The contents, I believe, is just the formal documents of the charging of the withdrawal, but it contains certain sections of the National Labor Relations Act that I will probably refer to later.

Mr. McMurray: I will object to it on the grounds that it is immaterial, your Honor.

The only way I can see that the question of the Labor Board has any materiality is if the argument is advanced, and I take it that it will be—

The Court: I allowed that questioning on this theory:

To show any bias or prejudice of this witness on cross-examination. I don't think the National Labor Relations Board hearing or the matters alleged have anything to do with this hearing. It was merely for that reason to show any possible course of conduct that might throw any light upon this man's attitude towards the union.

If it had been objected to, I would have given the reasons, but I just allowed it as a preliminary question, and you got into it to a certain extent, merely to show bias or prejudice, if any.

Mr. Kennedy: Your Honor, I would like to state, if I

[fol. 53] may, that the only purpose of injecting this issue at all is in connection with the argument about the exhaustion of remedies. We don't contend in anyway, what the labor Board did, reflects on the merits or lack of merits of this charge, of Mr. Gonzales' case, and we are not offering it for that purpose at all, but the section does contain references to certain sections of the Labor Act which the Court could take judicial notice of, and I thought as a matter of convenience we could have these sections before the Court by having this formal document introduced in evidence.

The Court: Well, if there are any sections in the Labor Relations Act that you think the Court ought to take judicial notice of, just call them to my attention. I have a copy of them.

Mr. McMurray: That is all, Mr. Gonzales.

The Court: You may step down.

Mr. McMurray: The Plaintiff will call Mr. Faure.

ELIE FAURE, called as a witness by and on behalf of the Petitioner, being first duly sworn, was interrogated and testified as follows:

The Clerk: What is your first name?

The Witness: Elie—E-l-i-e Faure—F-a-u-r-e (Spelling)

The Clerk: Your address?

The Witness: Box 242 Kentfield.

[fol. 54] Direct examination.

By Mr. McMurray:

Q. Mr. Faure, is that correct pronunciation?

A. Right.

Q. What is your occupation?

A. Business Agent of Lodge 68.

Q. And how long have you been the agent there?

A. January 15th, 1952.

Q. You have been a member for a number of years before that?

A. Yes.

Q. Do you know the Plaintiff in this case, Mr. Gonzales?

A. I do.

Q. And Mr. Faure, do you know approximately how many members the Lodge had, local 68, that is, had in August of 1952?

A. Oh, I have an idea approximately—I'd say in the neighborhood of 4000.

Q. And at that time was there a regular time and place set for the meetings of the local?

A. Yes.

Q. When were the meetings held; was it on a certain day every other week or—

A. Twice a month, first and third Wednesdays of each month.

Q. First and third Wednesdays of each month. Those were regular meetings, were they not?

A. Yes.

Q. Now, on occasion, it has been necessary to call special meetings, has it?

A. That's right.

[fol. 55] Q. And in your minutes, you indicate whether or not a meeting is a regular meeting or a special meeting?

A. That's right.

Q. Now, you were a member in August of 1952?

A. That's right.

Q. Were you present at the meeting, at which meeting on August 2nd of that year, when the vote was taken to rescind the prior action with regard to Mr. Gonzales?

A. May I ask you a question? You are asking me in August of '52, is that what you are asking?

Q. Yes, excuse me—I mean August of '52—I mean August of '50—may I have that Exhibit 3?

The Clerk: Plaintiff's 3?

Mr. McMurray: Yes.

Q. Now my question, I will repeat it, were you present at the meeting of August 2nd, 1950?

A. No, sir.

Q. Were you a member of the union at that time?

A. Right.

Q. Now I am sorry, I have inadvertently asked questions

regarding the wrong year. Do you know approximately how many members the Local had in August of 1950?

A. Not offhand, no.

Q. Has there been any significant change, any large change in the membership of the union as to numbers, that is, in the past four or five years?

A. I don't think so.

[fol. 56] Q. For many years it has had in the neighborhood of four or five thousand members, has it not?

A. It all depends how far back you want to go. If you say many years, that covers quite a territory.

Q. I will agree with you, at least since 1945.

A. There has been quite a difference in membership, since 1945.

Q. But in August of 1950, at any rate, there were in the neighborhood of 4000 members?

A. I think that is approximately correct.

Q. And the questions that I asked you, with regard to meetings, regular meeting nights, they would apply to 1950 as well as to 1952, would it not?

A. Yes.

Q. Now, was any method regularly used in 1950, to notify members of the union of any business that was to be done, taken up at a meeting?

A. I couldn't testify to that because I didn't attend those meetings regular at that particular time, and I couldn't testify to that, because I wasn't there.

Q. You were a member at that time?

A. Right.

Q. Did you receive, as a member, any notice from the union about business to be taken up at regular meetings?

A. Could I ask a question in order to prepare my answer? What do you mean, in regards to the Gonzales case? Is that what you are referring to, or the general business of the Lodge?

[fol. 57] Q. Well, first of all, let me ask you about the general business of the Lodge.

A. Well, the general business of the Lodge, whenever there is a special meeting called for actions on policies of the Lodge, we get notification.

Q. But whenever there is a meeting, regular meeting

to be held, you did not get any particular notification, is that correct?

A. No, that's right.

Q. Now, with regard to Marcos Gonzales, did you receive any notice from the union that any action was to be taken with regard to Marcos Gonzales on August 2nd?

A. No, I didn't.

Q. Now do you know, Mr. Faure, whether any by-laws or other regulations concerning the Local, beyond those which appear in the union constitution, which has been offered in evidence, received in evidence, as Respondents' Exhibit A—

A. The only by-laws the Lodge has is in the International Constitution, we comply with.

Q. You are familiar with that, are you not?

A. That's right.

Q. Is there any provision in here with regard to a quorum, what constitutes a quorum of the Local Lodge?

A. I couldn't tell you offhand whether it is in there or not. I wouldn't know.

Q. Do you know if there has been any practice with regard to determining what a quorum is?

[fol. 58] A. Well, it's always been a policy of the Lodge that a quorum should be 25 members exclusive of the officers of the Lodge.

Mr. McMurray: Your Honor, may I confer with Counsel for just a moment, on this question?

Q. Mr. Faure, prior to August, 1952, let me say between February 1952 and August of 1952, did Lodge 68 have any agreement with employers, collective bargaining agreements with employers in the Bay Area?

A. Yes.

Q. It did have?

A. Yes.

Q. And do you have copies of those with you?

A. No.

Q. Were those agreements terminated and a new agreement put into effect in August of 1952?

A. They generally are,

Q. Do you know whether they were in this case?

A. Well, what reference to what agreements are you talking about?

Q. Well, all the agreements which Local 68 had with employers in the San Francisco area.

A. That is the policy of the Lodge when an agreement expires, to initiate a new agreement, that you terminated the old agreement, before the new one goes into effect.

Q. And in August of 1952, a new agreement went into effect, did it not?

A. No, my first agreement went into effect—

[fol. 59] Q. The first agreement?

A. As far as the one you have in your hand is concerned, yes.

Q. You had agreements before that, though?

A. Not with the marine industry.

Q. Let's get this straight, Mr. Faure. I am ignorant on the subject and you have the knowledge. My questions may not be put to bring it out. Were there agreements between employers of marine machinists, employers who did repair work on vessels, in existence, agreements between Lodge 68 and such employers, during the period from February 1952 to August of 1952?

A. Not to my knowledge.

Q. There were none. And in August of 1952, such an agreement became effective, however?

A. Yes.

Q. Was there any material difference between the procedure followed with regard to hiring of marine machinists before and after the effective date of that new agreement?

A. Not to my knowledge.

Q. Now, I show you the booklet entitled "Pacific Coast Master Agreement for Marine Machinists Between Pacific Coast Shipbuilders and International Association of Machinists and Local Lodges Nos." among others, 68.

A. That's right.

Q. That is the agreement that you testified to a moment ago, is it not?

A. It is the agreement that went into effect in August of 1952.

[fol. 60] Mr. McMurray: I will offer that in evidence, your Honor, as Plaintiff's Exhibit next in order, calling attention

particularly to the provisions of Section 2, Union Security and Hiring of men.

The Court: It is admitted in evidence.

The Clerk: Plaintiff's 8.

The Court: Petitioner's Exhibit next in order.

(Whereupon, copy of agreement referred to was marked Petitioner's Exhibit No. 8 and admitted in evidence.)

Mr. McMurray: Now, your Honor I have here—oh, excuse me, I have a witness on the stand.

That is all the questions I have, Mr. Faure.

Mr. Kennedy: I have nothing at this time.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. McMurray: I have here, your Honor, a copy of the Constitution which became effective April 1st, 1949, which was the Constitution and by-laws in effect during the period when the trials were held here, and I understand, Counsel, that there are no material changes in the Constitution, between that and the one that's been introduced into evidence, insofar as this case is concerned.

Mr. Kennedy: I am relying on Mr. McGraw. I have never seen that, Counsel, but we have no objection, if you want to introduce it.

Mr. McMurray: Perhaps then in order to be perfectly clear, have the record perfectly clear, your Honor, I will offer in evidence the Constitution effective April 1st, 1949.

[fol. 61] Mr. Kennedy: The only thing—I am not objecting to it in evidence—I would like the record to show that that constitution or the constitution that I offered was the one that I understand to be effective at the time that Gonzales was tried by the Local, on July of 1950.

Mr. McMurray: I take it we have both of them in, the entire period is covered.

The Court: All right, we will admit it in evidence as Plaintiff's Exhibit next in order.

The Clerk: Plaintiff's 9.

(Whereupon, copy of Constitution was marked, Petitioner's Exhibit 9 and admitted in evidence.)

Mr. McMurray: Plaintiff will rest, your Honor.

Mr. Kennedy: We would like to make some motions for non-suit and to quash the writ, your Honor, first of all, on the ground that Plaintiff's case shows by an examination of the Constitution and by the testimony of the Plaintiff, that he has not exhausted his remedies within the local organization, nor the International.

Now on this point the California cases can be summarized as holding firmly that the constitution of a labor organization is a contract between the member and the organization, the terms are binding on both of them, and when a person becomes a member of the association the terms of the constitution are the conditions that he agrees to when he accepts such membership and he is granted that [fol. 62] privilege. Section 6 of Article 25 provides as follows, your Honor—now, I am reading it in part, this is in the middle of that section which is the most pertinent part:

“Before any appeals can be taken from any decision of the Executive Council, the decision, and all orders of the Executive Council in relation thereto, must be fully complied with by all parties concerned therein, in order to entitle them to enter an appeal, and in no case shall any district or local lodge or any individual member or members thereof, appeal to the civil courts for redress until after having exhausted all rights of appeal under the provisions of this Constitution. No member of the Executive . . .”——

That is all that is pertinent there. Now in connection with that section, there is provided that—there is a further appeal to the convention—the particular section escapes me at the moment, your Honor, but the Constitution will reflect, I think——

The Court: Well, Mr. McMurray concedes that. He hasn't——

Mr. Kennedy: Well I think Mr. McMurray——

The Court: He says he doesn't have to appeal at all, right?

Mr. McMurray: That's right.

The Court: I think he concedes that if an appeal were [fol. 63] required in this case, that he has not exhausted

that final step and gone before the—I think I gathered that from your opening statement——

Mr. McMurray: That's correct. However, I point out that the appeal offered here is a nullity. You are required to apply from the decision that you are appealing from before you can appeal further; I will argue that no effective appeal is offered.

The Court: There are also a line of decisions that if an appeal would be, in effect, actual, serve no purpose, it can't be had, can't be complied with. There are some decisions to that effect, are there not? Then it is not necessary to exhaust all the remedies.

Mr. McMurray: Number of recent decisions on that.

Mr. Kennedy: I think in that case the record has to reflect that it would be a waste of motions to go through those appeals. I find that I had a right before me, the thing I was looking for, your Honor, on the same page. It specifies a decision, that is page 59 of the Constitution. It specifies that in addition to the referendum that an appeal may be taken to the convention of the International. Now in that connection, I'd like to point out a California case that involved comparable factors.

It is Bush against the International Alliance, 55 Appellate Second 357, and I will read, if I may, from page 365 of that decision:

[fol. 64] "It is apparent from the record that the Writ of Mandate should have been denied in any event, for the reason that the Petitioner failed to exhaust all the remedies provided by the Constitution and by-laws of the union. As stated, these constitute a contract between the member and the union, binding both upon the member and the union. And, as heretofore stated, the constitution and by-laws of the union provided for a final appeal by an aggrieved member of the Alliance in convention assembled. This, the Petitioner failed to do, stopping with his appeal to the General Executive Board."

There is a reference, your Honor, in 21 ALR 2nd in which that case is cited, and if my recollection is correct, it goes into the question of fact, that the question is held out of state or is not to be held for a few months or a

lapse of time, does not make that appeal inoperative insofar as constituting an appeal. On the question of exhausting his remedies, I have in mind the statement just made by Counsel, or rejected; it is true that in order to comply with the decision of the International President that the Plaintiff would have to pay \$500 and that we don't dispute that at all, and it also appears that he would have to make an apology.

It does not appear from the record or from anything that's been introduced here that Plaintiff attempted to make a contingent apology, or to state that he was apolo-[fol. 65] gizing merely for the purpose of an appeal. That is speculative; that is in the past. I don't think the situation is such that you can say that automatically, that there was no effective appeal available.

We can conceive, as it approaches that ingenuous point, Counsel and the Plaintiff may have had to take the sting out of complying with the requirements of his living up to the contract.

Now granting that it may be onerous and that it may be a—something that seemed to the Plaintiff to negative his rights of appeal, the fact remains that under the cases, and there is several recent cases, Supreme Court cases which have reiterated that principle, that the constitution is the contract—granting that the terms of the contract are onerous, we submit that that in itself is not grounds for saying that a person need not comply with them.

In *Cason versus Glass Bottle Blowers Association*, at 37 Cal 2nd 134, which is a recent Supreme Court case, that principle was reiterated.

The Court: In other words, in this case he would have had to apologize and say, "Well, I am only apologizing for purposes of appeal for the time being"?

Mr. Kennedy: If that is the way he wanted to approach it, and on the other hand he could apologize and then appeal and then withdraw it, I suppose.

Now, your Honor, with respect to construing the terms [fol. 66] of this constitution and whether or not it is reasonable, we submit that under the approach that the Court will not unduly interfere with the internal functions of an organization and that they will not retry cases that the union has tried and that they will not substitute their own

interpretations of the law, there is, I believe, two well accepted propositions—

The Court: Well, I suppose that if they imposed a fine that perhaps there wouldn't have been any great objection, though the man would have to part with \$500, but it might be akin to paying a tax under protest. With the requirement of an apology, because once an apology is made, it is made—you can't unring it—well, I get your point now. What are you saying, Mr. McMurray?

Mr. McMurray: Well, first of all that—

The Court: You are contending that—if I get your theory—that you didn't have to appeal to begin with.

Mr. McMurray: For a number of reasons. Perhaps I'd better state them.

The Court: All right.

Mr. McMurray: It is somewhat extensive.

First of all, the law is perfectly clear that in these expulsion cases, the terms of the constitution and by-laws must be very strictly complied with. That has been the holding of the courts in a number of recent cases in which we have had the misfortune to be on the losing side, cases [fol. 67] involving the Marine Cooks and Stewards Union.

Now, in this case, the constitution is quite explicit with regard to the methods to be used in disciplining or expelling members. They are set forth in Article K of this little booklet, the Constitution, and that provides in Section 6 that:

“The Trial Committee shall report at the next regular meeting of the local lodge. Such report shall be in two parts as follows:

“First: The report shall contain the findings and verdict of the Trial Committee, together with a synopsis of the evidence and testimony presented by both sides.

“After the Trial Committee has made necessary explanation of its intent and meaning, the Trial Committee's verdict with respect to guilt or innocence of the Defendant, shall be submitted without debate to a vote by secret ballot of the members of the local lodge.

"Second: If the lodge concurs with a 'guilty' verdict of the Trial Committee, the recommendation of the Committee as to the penalty to be imposed shall be submitted in a separate report to the lodge and voted on by secret ballot of the members then in attendance."

Now, there is no consideration at all for considering or [fol. 68] rescinding or taking further action upon the matter after the vote has been against the recommendation of the trial committee, and it is our position that there would have to some specific authorization for that in these by-laws for that to be allowed. But in addition to that, not only is there no specific provision here, but there is a provision that Roberts Rules of Order govern the proceedings of all these lodges unless it is otherwise provided. Roberts Rules of Order in Section 37 provides that no motion to rescind can be made, that is, the motion that was made in this case. No motion to rescind can be made on a motion which expelled or elected a member to a body.

Here are the exceptions to a vote to rescind. The vote can not be rescinded after showing has been done as a result of that vote, that the assembly can not undo or in case it is in the nature of a contract and the other party is informed of the fact, or where a resignation has been acted upon or one has been elected to or expelled from membership or office, and the person was present or has been official- notified of the acceptance or expulsion.

The only way to reverse action of expulsion is to restore the person for membership or office which requires the same preliminary steps in the vote as is required for an election. So a motion to rescind, can not be made in the case of a motion which has dealt with the election or expulsion from membership in a body.

[fol. 69]. Furthermore, the general rule on motions to rescind in Roberts Rules of Order as stated in Section 37 is that notice must be given at the previous meeting or called for the meeting, that a motion to rescind is to be presented or it may be rescinded without necessity, by a two-thirds vote or by a majority of the entire membership.

None of those conditions was complied with here.

Furthermore, if the motion to rescind be considered as a motion to revoke or reconsider, it is not in accordance

with the provisions of the Article K—no, not Article K—the Constitution of Local Lodges as appearing in Article G which provides that no motion to reconsider may be had unless it is moved by one who voted in favor of the motion, or one who voted on the side that prevailed in the previous meeting.

That is also in accordance with Roberts Rules, and is repeated in the constitution and by-laws.

Now since, by the constitution it was required that the vote be on a secret ballot and it was on a secret ballot here, it is perfectly apparent that it was never intended that this kind of a motion could be rescinded, and that a man could, win one time and then the next meeting, when his friends aren't there, lose again, because nobody can tell who voted on which side where you have a secret ballot on it.

So, it is impossible for anybody to make a motion to reconsider a vote on this kind of a question.

Also, the decision of the President of the Grand Lodge [fol. 70] is the fine for \$500 and it is provided in Article K that no fine more than \$50—Article K, Section 8, page 101. I will read it:

“No fine shall be imposed upon any member or applicant eligible for membership in this Association in excess of \$50 unless the same is first approved by the Executive Council.”

And the Executive Council has, as the evidence showed, the Executive Council had not acted on the question of the fine until after it had been imposed by the President; and furthermore, the punishment imposed was a fine and the necessity for making an apology, which is nowhere provided for in the provisions of Article K, although the—or elsewhere in the constitution, although the punishment for the offense of which the Plaintiff was convicted is set forth in Article 25, Section 1 of the Constitution, provides the following punishment:

“Section 1. Any district lodge; local lodge or any member or members of a local lodge circulating or causing in any manner to be circulated any false or

malicious statements reflecting upon the private or public conduct . . .” —and so on—I won’t read the whole thing— “. . . any such individual found guilty of a violation of the provisions of this Section shall be subject to fine or expulsion or both.”

[fol. 71] But it says nothing about an apology. So that portion of the punishment was severely illegal.

Finally, I think it is illegal to penalize a man because he went to court about a wrong which he felt had been committed on him and submitted that question to the courts, set up by the State of California, and that is what was done in this case.

So with all of these things, there are more, but I didn’t think it necessary to dwell on them at any greater length—I think we come clearly within the rule that where the procedures set forth in the constitution haven’t been followed, then it is not necessary to exhaust remedies or to appeal, and I would rest also on the ground that the purported appeal offered is not an appeal since it would require you to execute the sentence, before you could appeal, and the ground that the punishment or sentence imposed was illegal from its very beginning.

Mr. Kennedy: Your Honor, with respect to interpretation of Roberts Rules, I have a copy here too, by chance, and we disagree with the interpretation of Counsel. Now I suppose it would be fruitless for each to argue our own interpretation of it.

The Court: Perhaps somebody ought to put one of those in evidence.

Mr. Kennedy: I was going to suggest—

The Court: I think I can take judicial notice of Roberts [fol. 72] Rules of Order.

Mr. McMurray: Could you—

Mr. Kennedy: If we stipulate that you can, it would be agreeable with me, your Honor.

Mr. McMurray: I would so stipulate, your Honor. The copy I have here is the property of the—

The Court: Oh, I have a copy, but I was—I can get a copy, I have one, as a matter of fact. The point that I was concerned with was whether I could take judicial notice of it.

Mr. McMurray: Yes.

The Court: If I can't take ~~judicial~~ notice of a Municipal ordinance, I suppose I can't take judicial notice of Roberts Rules of Order. They aren't an official treatise or statutory enactment.

Mr. McMurray: I understand we have a stipulation that you may take judicial notice of them, or may consult them.

Mr. Kennedy: That's correct, yes.

Now your Honor, as I say, we feel—although I am not arguing this at any length—we feel that Roberts Rules of Order were complied with or certainly an interpretation can be given with relation to this action. I just want to read this one sentence, which refers to a motion to rescind, and it states:

"With exceptions noted later, any objection or un-[fol: 73] executed part of an order may be rescinded by the majority of the vote provided notice has been given at the previous meeting or in the call for this meeting, or it may be rescinded without notice by a two-thirds vote."

Now, with respect to the compliance of Section 8 of Article K, I haven't studied that thoroughly, your Honor, but I would like to state in that connection that—

The Court: Did you have a two-thirds vote here?

Mr. Kennedy: Yes, your Honor.

Mr. McMurray: I think not. It falls one short of a two-thirds vote.

Mr. Kennedy: Well I think we can—we will submit the union—

The Court: The minutes will reflect.

Mr. Kennedy: Yes.

Mr. McMurray: May I look at them, your Honor, while Counsel is arguing?

Mr. Kennedy: That's right.

The Court: Well, the point, the question that confronts me, as I sit here, is assuming that the things that you say are correct, Mr. McMurray, that certain of these steps weren't followed, some of these procedural steps, wouldn't you still be obliged to urge that as a point on your appeal within the structure provided for by the union's by-laws

or the constitution? Let's assume that the President [fol. 74] couldn't fine more than \$50 but he did it. Wouldn't the convention or the Executive Committee have the right to reverse him on that score?

Mr. McMurray: Yes, but he fines you \$500 and says "You have to apologize" and before you can take any further appeal, see, he went up to the point where he could take his appeal without complying with the judgment, but before you can go any further you have to apologize and you have to pay the \$500. And you can't take any steps. The portion that Counsel read indicates you can't go beyond that point without complying, without complying with the judgment.

The Court: You concede then if he had just been fined \$500 without the conditions precedent that he pay it, that his remedy then would have been to exhaust his appeal before the International.

Mr. McMurray: That would have been an available remedy, but I do not concede, under the Weber case, and the cases that have followed it, your Honor, that he would have been required to do that before complying with—before coming to court, because these cases have gone to an extent quite unprecedented, and I must say over our most strenuous efforts to the rules that where the procedure set forth in the Constitution wouldn't—wasn't followed, even though the procedure that was followed may have been more democratic and a better procedure from every point of view; still the procedure set forth must be followed and if it is not followed the whole procedure is [fol. 75] illegal and no exhaustion of remedies is necessary for a court can grant relief.

The Court: Well it seems to me in this case that rather than proceed with the Respondent's evidence, there doesn't seem to be too much dispute as to what took place—

Mr. McMurray: No, there doesn't.

The Court: It is more or less an interpretation of what law is applicable and what rules and regulations apply. It seems to me that the sensible approach to this case would be to submit the matter now as far as the motion to quash is concerned, and submit it on points and authorities.

Mr. McMurray: It would seem to me to be proper. 1

hadn't expected to get to this point of trial today or I'd be prepared to argue it now.

The Court: It seems to me that Counsel's contention is, if you haven't exhausted your remedies, that is the end of your case. I guess you concede that. If that is the law, as I would find it, there'd be no point in going any further.

Don't you think that is a sensible approach, Counsel?

Mr. Kennedy: Yes, your Honor.

The Court: I'd like some authorities first of all on whether or not the failure of a subordinate group or a subordinate officer to comply with jurisdictional requirements should not first be reviewed by the higher tribunals as testified in the by-laws or the constitution of the union of the International; and secondly, I think the big point here is [fol. 76] whether the fact that the constitution required that the order be complied with before the final step of appeal be taken, whether or not that would come within the category of decisions that say that if an appeal is in effectual, you don't have to exhaust that remedy.

It may well be that there are some authorities that will say, well, you've got to do it anyway. Because, as I understand the contention of the Respondents, it is that this is a contract and if someone joins a union and that contractual provision is in there, that he's got to pay his money in advance before he can appeal, he certainly knows—he certainly has contracted with that in mind, hasn't he?

Mr. McMurray: I don't—

The Court: Now, whether a member is burdened—that makes that type of provision ineffectual or illegal or unlawful is something else.

Mr. McMurray: If I may comment, your Honor, I would say that it seems to me that to miss the point, and of course this is perhaps just part of the memoranda that should be submitted, and yet your Honor has outlined now what seems to be the points on which this case turns, at the present moment, at least, and where it is not part of the contract that one should have to apologize, how can the argument that this is part of the contract apply? I don't understand that.

The Court: That is not in the contract, is it?

Mr. McMurray: No, and yet it is in the contract that [fol. 77] you have to execute the judgment and judgment says you have to apologize, so it seems to me that unless we take a little broader bite at the matter——

The Court: Well, you can go as far as you want in your brief. I am just indicating the matters that seem to be of primary concern at this moment.

It may well be that the decisions indicate that in a situation, that the punishment imposes something that is not provided for, that then you don't have to appeal. How long will it take you men to get a brief in?

Mr. McMurray: Ten days? I could get it in sooner, but if I could have ten days——

The Court: Ten, ten and five.

Mr. Kennedy: Fine.

The Court: And then we will put the case over to a date beyond that, if you can get them in.

(Further discussion.)

[fol. 78] Wednesday, February 3, 1954, 2:00 o'clock P.M.

The Clerk: Gonzales vs. International Machinists Union.

Mr. McMurray: Ready.

Mr. Kennedy: Ready.

Mr. McMurray: Your Honor, I have a motion which I have filed, a written form. I am not sure whether it has reached the file in the case or not.

The Court: What is the nature?

Mr. McMurray: It is a motion for leave to amend the complaint to insert allegations regarding humiliation and, well, physical suffering, suffered by the Plaintiff as a result of his wrongful expulsion.

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[fol. 83]

A. C. McGraw, called as a witness by and on behalf of the Respondents, being first duly sworn, was interrogated and testified as follows:

The Clerk: What is your name, please?

The Witness: McGraw, 600 Van Nyes Building, Los Angeles 14.

The Clerk: A. C. McGraw?

The Witness: Yss.

[fol. 84] Direct examination.

By Mr. Kennedy:

Q. Your name is A. C. McGraw?

A. It is.

Q. What is your occupation, Mr. McGraw?

A. I am Grand Lodge Representative for the International Association of Machinists.

[fol. 87]

By Mr. Kennedy:

Q. Now, the record will show you, Mr. McGraw, that the trial, the union trial of this case involved a charge or a complaint against Mr. Gonzales that he had charged one of the union officers with having ordered a union member to assault and commit a battery on the Plaintiff. Now, would you state what significance, such a charge has, if any, with respect to the functionings and effect on a union officer?

Mr. McMurray: I will object to that, your Honor.

The Court: Sustained.

[fol. 89]

The Court: He is not denying the right that they had the right to bring him to trial on these charges, are you?

Mr. McMurray: No, but we do deny that having filed an action in the Superior Court under the circumstances which he did, containing the allegations which he did, constituted this matter of law, a violation of the sections of the union constitution that they were said to violate.

The Court: Yes, I didn't understand it that you had made—that you were resisting that particular feature of the case. I had understood the theory (upon which the case was tried, that you conceded that the union had a right to bring these charges against your client.

Mr. McMurray: I think they have, yes.

The Court: And that is what you are trying to prove now, that these grounds for these charges—I think that the Plaintiff's contention here is that after he had been tried on the charges and the membership had thereafter acquitted him, so to speak, that the machinery thereafter adopted was in contravention of the by-laws. I think that is the entire issue in this case, is it not?

Mr. Kennedy: Well, to me that seems to be a realistic analysis; * * *

[fol. 107] Mr. Kennedy: I realize that it speaks for itself. It is preliminary to another question.

Mr. McMurray: I withdraw the objection.

The Witness: Article 1, Section 3, and particularly lines 19, 20 and 21, is the first reference that I testified to, a few minutes ago.

By Mr. Kennedy:

Q. Now under that—strike that.

Do you know of your own knowledge any of the functions of the organization which rely for its authority upon that general language contained in those provisions, and if so, what type of action is taken pursuant to the powers that that creates?

A. Well, there are many, because this goes into varied subjects, such as the application of our laws; it even goes so far as to cover, for instance, the duties of a recording secretary at the local level. By custom and usage, he keeps the minutes. He is not required specifically by our law to do so. The method of appeals on trials is part of it. The method of ruling with respect to certain types of seniority in government lodges and the application of this contract or this constitution to a government employee who has no contract with a government as a collective bargaining agreement, but who, because of custom and usage has this constitution when it refers to contracts supplied by him in a particular way. It goes to the matter of an enforced transfer of member within so many days after he goes to work, within the jurisdiction of a different lodge, and there [fol. 108] are many and varied applications of it.

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By Mr. Kennedy:

Q. Mr. McGraw, I am going to ask you if you will direct [fol. 109] your attention to the period between January 1st, 1952, and August, 1952, and state whether or not you know of your own knowledge whether there was any collective bargaining agreement in effect between Lodge 68 and the employers that employed marine machinists as a general rule?

A. We had no contracts in this particular area at that time.

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[fol. 113]

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The Court: Now what is this?

Mr. Kennedy: That your Honor, is a union record, and I might state the significance or the relevance of it is that it shows out of work entries for the periods involved here, and it goes to the question of damages for several months prior to it.

The Court: Your objection is to the materiality in this also?

Mr. McMurray: Yes, and no foundation has been laid

your Honor. I may say that I have no—I don't contest the implied argument here that the periods during which the Plaintiff was out of work are material, but I think that it is necessary to deduce—to say something more than to offer this record to establish that he was unemployed during that period. As a matter of fact, I think if I may say so, Counsel may not be aware of this—during a number of the months shown in the record there, the Plaintiff was physically disabled and during other months the union refused to accept his dues and there was a—not until there was an instruction received from President Hayes that pending appeal his dues should be received, that they were received.

[fol. 114] The Court: I think this is probably cumulative in some respects. If you have no objection to the foundation as to it being a union record, kept in the regular course of business, I think it is material for whatever weight it would have.

Mr. McMurray: Very well. I think that that is an insufficient foundation and I would make my objection on the basis that no foundation has been laid, but I have no objections to its materiality if it is offered to show the periods when he was unemployed.

Mr. Kennedy: Well Counsel, this may help some to obviate that objection. We have had here, your Honor—we have here a person who is familiar with the authorities, who could authenticate that it is Mr. Gonzales', so if your Honor desires, we can produce that witness.

The Court: The objection of the authenticity and the foundation is well taken.

Mr. McMurray: Not to the authenticity of it as a document, your Honor, but the foundation; in other words, it is offered, I take it, to show that Mr. Gonzales was out of work for certain periods of time.

The Court: It is merely some evidence of his work record, and in some respects bears out his contention in his own case; for example, it shows here the period that he was expelled erroneously.

Mr. Kennedy: That is correct.

[fol. 115] The Court: It is endorsed on here, the period between 6/26/50 and 11/21/50, apparently the union took the position when he was expelled by union action, that he was expelled.

Mr. Kennedy: That is correct.

The Court: Apparently, they sought to correct that and reinstated him, and that portion would certainly indicate that. Well, it is cumulative and corroborative of the testimony that's already been offered.

Mr. Kennedy: I think, your Honor, the particular significance of that, and I might state—

The Court: I will say this—without interrupting, to expedite matters—if Mr. McMurray will stipulate that if a union official took the stand in charge of these records, the custodian, and testified that they were union records kept in the usual course of business, he would concede that the foundation would be laid.

Mr. McMurray: Yes, I would.

The Court: I would then overrule the objection and admit them as to their materiality.

Mr. McMurray: All right, your Honor.

The Court: This will be received as Respondents' Exhibit next in order.

The Clerk: E.

(Whereupon, union record of Petitioner Gonzales was marked Respondents' Exhibit E and admitted in evidence.)

[fol. 116] By Mr. Kennedy:

Q. Mr. McGraw, I hand you Respondents' Exhibit E and direct your attention to the lower right-hand portion of that exhibit where there are symbols commencing with December of 1951, going through November of that year, and ask you whether or not the notations opposite that date, indicate that dues were accepted by Lodge 68 for that period?

A. I take it, Counsel, you are referring to the column that is headed by "Amount"?

Q. That is correct.

A. That does indicate the amounts that were paid, for what periods they covered, and where you see "O.W." and in cases say 30 cents, 20 cents, 10 cents, it indicates that he received and he paid for and received out of work stamps that were issued in accordance with our constitution and by-laws.

Q. And what is the significance, if any, of the out of work stamps with relation to the employment of one of the members of Lodge 68?

Mr. McMurray: I will object to that, your Honor. It goes to the form of the question. I have no objection to the question which would elicit the practice, but—

The Court: Doesn't the record speak for itself?

Mr. Kennedy: Well—

The Witness: Well, your Honor, as a matter of explanation, in order to be eligible for an out of work stamp—he might be ill or he may have recorded himself as out of work. This does not distinguish between those two. It only indicates that the Lodge had reason to believe, on representations made to it or from his records, that he was not available for work and not employed.

Mr. Kennedy: That is all. Thank you, Mr. McGraw. No further questions.

Mr. McMurray: No cross-examination.

The Court: All right, you may step down.

The Witness: Thank you.

Mr. Kennedy: I'd like to call Mr. O'Hara.

BERNARD O'HARA, called as a witness by and on behalf of the Respondents being first duly sworn, was interrogated and testified as follows:

The Clerk: What is your name and address?

The Witness: Bernard E. O'Hara.

The Clerk: Where do you live, Mr. O'Hara?

The Witness: 448 Taraval Street.

Direct examination.

By Mr. Kennedy:

Q. Your full name, Mr. O'Hara?

A. Bernard E. O'Hara.

Q. And what is your residence?

A. 448 Taraval.

Q. During the year 1952, Mr. O'Hara, what was your occupation?

A. Dispatcher.

Q. For what organization?

A. Lodge 68.

Q. And I take it you are also a member of Lodge 68?

A. Yes, sir.

[fol. 118] Q. How long have you been?

A. Eleven years.

Q. You say you have been a member for eleven years, is that correct?

A. Yes.

Q. Mr. O'Hara, you know the Plaintiff in this matter, Mr. Gonzales, do you not?

A. Yes, uh-huh.

Q. Now, after August, 1952, can you state whether or not Mr. Gonzales applied or in any way made any representations to you that he wanted to be sent out to work in his usual places of work, or where he is capable of work?

A. August, 1952?

Q. Well, after.

A. After August?

Q. Yes.

A. No.

Q. Were there any other dispatchers at Lodge 68, during 1952?

A. No, just day in and day out—maybe I was sick or something like that, one of the other officers.

Mr. Kennedy: I believe that is all.

Cross examination.

By Mr. McMurray:

Q. Mr. O'Hara, how does one member of Lodge 68 get a dispatch to a job?

A. Well—

Q. In a period since August of 1952?

A. He would automatically come in and put his book down and say he wanted to be dispatched to a certain place, whichever it might be.

[fol. 119] Q. And you mean that before he could ask to be dispatched to a place he would have to know a particular job and ask to be dispatched to that one, is that it?

A. Well, as a rule the jobs came into the office requiring so many men, and the men come in and would present their books and be given clearances to go to work.

Q. Well now, how would a man, suppose I was a member of Lodge 68 and I didn't know about any particular job that was open and I hadn't been told by an employer about a job, how would I get assigned to one of those jobs that you had open?

A. You would ask me if there was a job open and I would tell you.

Q. And I would have to be in the hall, then?

A. That's right.

Q. And if I weren't in the hall, I would never be assigned to a job, is that it?

A. No, no, if you weren't in the hall and I had a work card for you, why I would automatically call in rotation as the cards came.

Q. If you didn't have an out of work card for me, you wouldn't call?

A. That's right.

Q. So you dispatched members of the union who were not present in the hall, by sending them notice that there was a job open?

A. Telephone to them, yes.

Q. Telephone?

A. Yes, uh-huh.

Q. And did you have an out of work card for Mr. Gonzales [fol. 120] during that period?

A. No.

Q. Now, do you dispatch at all times during the day, or do you have certain times for dispatching?

A. 8:30 to 5:30.

Q. And how do you regulate the dispatcher—how do you regulate the dispatch of men, that is, between those who haven't come into the hall and telephone and those who are present in the hall?

A. Well, as a rule, when a job comes in, the men that are in the hall usually get the clearances.

Q. And the men who are out of the hall and have out of work cards in, they don't get any, unless there aren't enough men around the hall?

A. If they are registered, yes, because the minute I get all of the men in the hall working, I automatically start to call the ones that are registered.

Q. Do you keep records of machinists who are not members of the union, out of work cards for machinists who are not members of the union?

A. No.

Q. And during a period before August of 1952, were you dispatching then?

A. Yes.

Q. And did Mr. Gonzales come in for jobs, during that period from March of 1952?

A. I think once in February or March—I don't remember just what date it was.

Q. He came in one time that you remember?

A. Yes.

[fol. 121] Q. And did you dispatch him?

A. Yes.

Q. Where did you dispatch him to?

A. Pacific Ship Repair.

Q. And was that—can you state more definitely when that was? Was that the best you can recall it?

A. Well, that would be pretty hard to do. After all you are dealing with a thousand men—to remember one man on one particular day would be too much.

Q. So—

A. If I remember rightly, it was sometime in February, either February or the first part of March. I don't remember just when it was.

Q. And between the time that you dispatched him on that job and August of 1952, did you dispatch him for any jobs?

A. No.

Q. And did you have an out of work card for him?

A. No.

Q. Did he ask you to be dispatched to any jobs?

A. No, no.

Q. You deal with thousands of men there, you say, and you can't remember any particular man?

A. Well, I remember this particular case, yes, in a case like that.

Q. You do?

A. Uh-huh (Affirmatively).

Q. I mean, do you remember that Mr. Gonzales didn't come in?

A. He came in and talked, yes.

Q. He came in and talked?

A. But—

[fol. 122] Q. As a matter of fact, he came in frequently and talked to you, didn't he?

A. Oh, I'd say maybe once a week, two weeks, three, something like that.

Q. And he discussed with you the fact that he was unable to get a job and there was work available for him at several different plants here, Wagner-Neihaus, and Pacific Ship Repair and others, did he not?

A. No.

Q. He asked you to send him out to a job, didn't he?

A. No.

Q. Now, you knew that he wasn't working during that period, didn't you?

A. Yes.

Q. And you knew also that he had been expelled from the union, didn't you?

A. Yes.

Q. Now, is it your testimony, Mr. O'Hara, that he came up there and talked to you about once a week during that period, but he said nothing about being dispatched to a job?

A. That's right.

Q. What did he talk about?

A. He just come in and part of the time he didn't talk to me at all. He was talking, there's other men in the office, it's a little square office, maybe six or eight foot square, maybe six or eight fellows in there, there was lots of times that he didn't talk to me at all.

Q. During the occasions when he talked to you, what did he talk to you about?

[fol. 123] A. Mostly just the time of day.

Q. You mean what time it was?

A. No.

Q. What did he talk to you about?

A. Just discussing the pros and cons of the day, nothing pertaining to work.

Q. Nothing pertaining to work?

A. No.

Q. Did you have any other functions than a dispatcher during this period?

A. No.

Q. And it is your testimony that at no time during the whole period from March of 1952 to the present date when he came in and talked to you, did he ever even mention work, or being dispatched to work?

A. That's right.

Q. How did you know he was unemployed?

A. Well, the last——

Mr. Kennedy: Excuse me. I think that assumes something that is not in evidence.

The Court: Ask him first, if he knows.

Mr. McMurray: I did ask him and he's already testified that he did know. How did you know it, sir?

A. I did, he was expelled and naturally coming up as an expelled member, he wouldn't be entitled to work.

Q. You knew that he was not working, then, because he was expelled?

A. That's right.

Mr. McMurray: That is all. Thank you.

Redirect examination.

By Mr. Kennedy:

Q. Mr. O'Hara, were there occasions when non union [fol. 124] men would come into the hall, already, who had received or stated that they had jobs with employers that were cleared by the union, or sent by the union, back to the employer?

A. I don't get what you mean.

Q. Well, were there occasions when there were men that didn't belong to the union, that were sent by the union out to work, if the men had obtained the jobs for themselves?

A. Yes.

Q. And can you remember offhand, any examples of that where you sent non union men out to jobs?

A. Well, we done quite a bit of that type of work with Bethlehem Steel.

Q. Did Mr. Gonzales ever come in during the time when you were dispatcher and tell you that he had a job with any employer?

A. No.

Q. For you to send him out?

A. No.

Q. And with reference to your statement that since he didn't belong to the union, that he had no right to work, did that—what is the significance of that comment with respect to if he had already obtained a job from an employer, was it your testimony that that meant that he didn't have any right to work because he didn't belong to the union?

A. No, I wouldn't say that.

Mr. McMurray: Your Honor, I will object to that question. He is not entitled to cross-examine his own witness [fol. 125] and not entitled to ask him too—

The Court: Well, there doesn't seem to be any conflict here, does there, gentlemen? The union took the position that he was expelled. They wouldn't have given him any employment, as I understood it, even if there was some available during that period.

Mr. Kennedy: Your Honor, I think that is the very crux of this thing.

The Court: Except as a non union member, you mean?

Mr. Kennedy: The crux is concededly, he is being denied the advantages of the union.

Now, the advantages of the union, I think, would be that they dispatched union jobs to members that they knew of, but non union members, the union would send men out to jobs, if they had secured the jobs from the employer, and I was asking this witness to explain his testimony by way of the fact I thought it was misleading, which at least to me, it was—

Mr. McMurray: You want to explain away his testimony.

Mr. Kennedy: Explain the correct impulse.

The Witness: Well, it is customary——

Mr. McMurray: Well——

Mr. Kennedy: Excuse me. There is an objection.

The Court: Well, I will overrule the objection.

The Witness: It is customary that when a man goes out [fol. 126] and secures a job for himself, that he comes in with a letter, he is automatically cleared to the job, to go to work. Now if a man doesn't come in with a letter, he isn't cleared, that is for sure.

The Court: But that is, if he is a union member.

The Witness: No, the case of the non union member.

The Court: Well, do I understand—of course, you took the position that Mr. Gonzales was not a union member after he was expelled.

The Witness: Uh-huh (Affirmatively).

The Court: But would you have consented to his employment as a non union member during that period?

The Witness: Well, if he had come in with a letter, that would have been a question.

The Court: If he had come in with a letter that he had a non union employment, you would have presented it to the union.

The Witness: That's right.

The Court: Did you yourself have the authority to make that decision?

The Witness: No.

Mr. Kennedy: That is all.

Recross examination.

By Mr. McMurray:

Q. That is to say, Mr. O'Hara, that you would not, yourself, have dispatched him to a job if he had brought in a letter from an employer?

[fol. 127] A. I couldn't. I didn't have the authority to do it.

Q. Now, Mr. O'Hara, did Columbia Steel—did you ever dispatch non union marine machinists for work as marine machinists, to Columbia Steel during the period of March 1952 to the present time?

A. Yes.

Q. They didn't use marine machinists, did they?

A. Yes.

Q. But there was no work for marine—for non union marine machinists to which you dispatched them during that period, is that it?

A. That's right.

Q. And during that period, did you dispatch non union men to the employers who use marine machinists, the ship repair, employers and other employers who use marine machinists—did you dispatch any non union marine machinists to any jobs of that sort or to any such employers?

A. Not without a written request from the company, no.

Q. Well now, with a written request from the company, did you dispatch such?

A. Yes.

Q. Who did you dispatch?

A. Well, I wouldn't know offhand, the names. The records are in the office.

Q. Did you regularly dispatch non union marine machinists to ship repair jobs in similar work?

A. Only in cases of where we couldn't supply them from the union membership.

[fol. 128] Q. So that if there was a request from an employer with a letter that you supply a particular non union man for a particular work, that you couldn't fill otherwise, then you were sometimes authorized to dispatch such a man, is that it?

A. That's right.

Q. And you took that up with the union, did you?

A. Well, the senior business agent.

Q. The senior business agent?

A. Uh-huh (Affirmatively).

Mr. McMurray: That is all. Thank you.

Mr. Kennedy: I have no further questions. Thank you.

Your Honor, Defendants and Respondents rest.

The Court: Defendants and Respondents rest?

Mr. Kennedy: Yes.

The Court: Perhaps to expedite things, if you will so consent, Mr. Kennedy, to take Mr. Gonzales' testimony per-

taining to the matter contained in his motion to amend the petition, subject to a motion to strike, and if I should conclude that the amendment ought not to be granted, I will, of course, disregard that evidence and grant the motion to strike.

Mr. Kennedy: Yes, your Honor, and—

The Court: So that we can conclude the matter today.

Mr. Kennedy: I take it it will be understood, or could it be stipulated, I will make the motion—

[fol. 129] The Court: I am assuming that the motion was filed to amend.

Mr. McMurray: Yes.

The Court: You tell me you have filed it.

Mr. McMurray: Yes, your Honor.

The Court: And it didn't get into the proceedings, assuming that the motion has been made, I will take the motion under advisement and permit evidence to be introduced at this time, under the proposed amendment, subject to a motion to strike, in the event that I should deny the motion to amend, and I will consider that you have made a motion to strike.

Mr. McMurray: Mr. Gonzales, will you take the stand.

MARCOS GONZALES, recalled having been previously duly sworn, resumed the stand and testified further as follows:

Direct examination.

By Mr. McMurray:

Q. Mr. Gonzales, for how long have you been a marine machinist, roughly?

A. Roughly since '21—1921.

Q. Since 1921?

A. I think '20 or '21.

Q. And you have been a journeyman machinist and member of Lodge 68 for about how many years?

A. Well—

Q. Since what date?

A. Since '38 or '40, I believe—yes, '39 or '40.

[fol. 130] Q. Since 1939 or 1940, and during that time, you worked here in the Bay Area, as a marine machinist, did you not?

A. Yes, sir.

Q. Do you have a family?

A. Yes, sir.

Q. Of what does your family consist?

A. Two boys and my wife.

Q. And you have supported your family, did you?

A. Yes, sir.

Q. And you raised the boys to manhood?

A. Yes, sir.

Q. Now, Mr. Gonzales, after your expulsion from the union, the International Association of Machinists here, you were unable to obtain work, is that right?

A. Yes.

Q. You sought work several places—you have already testified?

A. Yes, sir.

Q. And you were turned down?

A. Yes, sir.

Q. By the employers there. Now, you have testified that you applied at the union hall for dispatchers of employment?

A. Yes, sir, and quite a number of times I applied.

Q. Was that after March of 1952?

A. Yes, I was around there pretty frequent, and I talked to the dispatchers, but the previous dispatchers there, they were all—Charlie Truax, he is correct, you know, and I was on the black list right through all that time.

[fol. 131] Q. Did you ask to be dispatched?

The Court: Did you want that—

Mr. Kennedy: I was going to move to strike that.

The Court: All right, I will strike that, reference to Mr. Truax.

By Mr. McMurray:

Q. During that period from March, 1952, after that period, did you ask to be dispatched, ask any of the dispatchers at the union hall, to be dispatched?

A. Yes, sir.

Q. And did you ask Mr. O'Hara to dispatch you?

A. Yes, I talked to him many times in regard to jobs, but he told me his hands were tied. Many a times, I talked to him, I was getting by pretty low, then, and I had to go down that bakery—down that Fitzpatrick Bakery and buy my bread, and take home, and I stopped there in the afternoon and I know that is the only chance to get out, I figured that is a good chance, sometimes there'd be calls for a number of machinists and nobody around the halls, but I'd stay there a number of times and I'd still be turned down—sometimes an hour or two.

Q. Did you ask to be dispatched?

A. Oh, yes.

Q. Mr. Gonzales, did this, your consequent expulsion, have any effect on you, as far as feeling about yourself, your position in the world is concerned?

A. Why certainly. If I hadn't walked home from the [fol. 132] hall, I used to walk home and used to walk to the hall, I was getting pretty low, so I had to squeeze everything I had.

Q. What do you mean you were getting low?

A. I was low in my finances, and I used to walk down to the hall and walk home, and I'd come down and beg, more or less, to see if there was a possibility of getting some employment.

Q. You had some money saved, did you, before this expulsion?

A. Why certainly, I had quite a bit saved, but I had consumed all that.

Q. You consumed all that, you say?

A. Yes.

Q. Why did you consume that?

A. Well, to live, to live on and pay my bills.

Q. After you were expelled from the union, that is?

A. Yes.

Q. And what effect did this have on your attitude, if any?

A. Why certainly, I wasn't living right. I was just existing. I was losing weight right through, and I was worried and I was just run-down, until finally I cracked up. I just

couldn't stand it anymore. I caught a bad cold, and all of that, and that developed this condition that I am today, which I am still in the hospital.

Mr. Kennedy: Now your Honor, excuse me, the testimony that the witness just gave, I submit, is within the realm of expert medical testimony and he stated his conclusion as to what caused his condition. I move to strike [fol. 133] that on that ground.

Mr. McMurray: Well, a man can testify about his own physical condition.

The Court: Yes, but what caused it is objectionable. Did he say he believed that that caused it?

Mr. Kennedy: That is correct, as I understood it.

The Court: I will strike the answer.

Mr. McMurray: All right, I think that the—

The Court: The witness can say—

Mr. McMurray: I will get at it again.

Q. Mr. Gonzales—

The Court: That is his conclusion, whether or not—

The Witness: Your Honor—

The Court: Just a minute now.

By Mr. McMurray:

Q. Mr. Gonzales, you say that you were worried, though, you were worried?

A. Yes, I was worried.

Q. And you say you developed colds, is that correct?

A. Yes.

Q. And after this had been going on for sometime, you developed a cold which hung on and developed into pneumonia, is that right?

A. Yes, and pleurisy.

Q. And finally into pleurisy, so that you landed in the hospital?

A. That's right.

Q. Now, did you have anything besides your own savings [fol. 134] ings on which to live during the period you were unemployed after your expulsion?

A. I had my boys' savings.

Q. Your boys' savings?

A. Yes, he was called back into the Army so he let me have all that, his money, so we can get by on and we still get a check from him every month. He sends home a check to his mother.

Q. And you used your son's savings, is that right?

A. Yes, sir.

Q. And that was after your own savings had been exhausted?

A. Yes.

Q. And how old are you, sir?

A. I am going on 54.

Q. You had been putting this money by, I suppose, in anticipation of your eventual retirement?

A. Yes.

Q. And did the exhaustion of your savings before you were old enough to retire, did that affect you?

A. Why, it cost me plenty of worry.

Q. And the use of your own son's savings, did that affect you?

A. Yes.

Q. In what way?

A. Well, it just made me feel—well, like I had my boys supporting me now and I didn't—I had been well enough that I was always supporting my family, and the—it kind of made me feel kind of low down, low, that is, cheap in [fol. 135] other words. I never liked to live off my children.

Q. When you were a member of Lodge 68, you were an official of that union, were you not?

A. Yes.

Q. Member of the Board of Trustees?

A. Yes, Executive Board.

Q. And as such, you were well known to the members of the union, were you?

A. Yes, I was always on the policy committee.

Q. And when you went to the hall, I suppose you were greeted by other members of the union as a—not only a member of the union, but an official of the union?

A. Yes, sir, I was well liked by all the boys. I showed it in my elections.

Q. And after your expulsion, was there any difference in your attitude, or their attitude toward you when you went around the hall?

A. Why, yes, they looked down on me, that I was incapable of getting my work and even—you see, we had two tickets, we had a blue ticket and a white ticket and administration ticket, so the administration ticket used to fall back on me and test me about it, look at your blue ticket, look what it is down there, they are not supporting you, they are letting you down, and they just kept hammering at it to me. They told me, why don't you go up and see so and so and so? He will get you on the job. He says, they will reinstate you right away, providing you sign some [fol. 136] affidavits. I refused to sign any affidavits, and that caused me plenty of trouble.

Mr. Kennedy: If I may interrupt you, I move to strike this answer on two grounds, primarily it states the conclusion—the first part was purely conclusionary, and the second part is objectionable on the ground it is phrased as to “they said” and so forth, as uncertainty.

The Court: It is stricken.

The Witness: Well I can——

The Court: Just a minute now.

By Mr. McMurray:

Q. Mr. Gonzales, when you went to the hall, did you feel that there was a difference in the attitude of the men there?

A. Yes.

Q. And did you have numerous conversations with men there in which they poked fun at you because your expulsion and the fact that you were no longer being supported by your former supporters of the union?

A. Yes.

Mr. Kennedy: I am going to object to that as too indefinite, your Honor.

The Court: Sustained.

By Mr. McMurray:

Q. Mr. Gonzales, can you recall any of the people who were—with whom you had conversations on this subject of your status, after your expulsion?

A. Oh, yes, the new—

[fol. 137] Q. Will you tell us who some of the people were?

A. Why, yes. William Davis was one and Frank Britten, the waterfront dispatcher—I mean, waterfront business agent—I talked to him about it, and they all told me that their hands were tied; also, the Treasurer, Mr. Risconi, he is a secretary—they have officers there as well.

Q. Can you recall any conversation in which you were told that your administration ticket or your ticket let you down, they could not give you assistance, and so on?

A. Oh, yes, you mean—

Q. With whom did you have that conversation?

A. Oh, that was another dispatcher, the other dispatchers that were there, George Simi.

Q. Simi?

A. Simi, he was the head business agent, and then the—I can't recall now—the dispatcher at that time, too—it was Ed Conlin, Eddie Conlin, he was dispatcher and also Mr. Griffin—I talked to quite a number of them, but Mr. Griffin has passed away now. I talked to pretty near all the other administration officers. I talked to Mr. Wagner. I talked to him for quite awhile—John Wagner.

Q. Now, Mr. Gonzales, the occasion in which you say you were kidded, teased about your status and the fact that you were not getting support from the members that had formerly supported you, let's direct your attention to that.

A. Yes.

Q. Do you remember, did that sort of a conversation occur [fol. 138] once or more than once?

A. More than once, everytime I was around the hall they were always twisting it in front of me.

Q. This was sort of in the nature of a continuing conversation that occurred everytime you went down there or nearly everytime you went down there?

A. Yes.

Q. And can you recall any of those particular conversations that you had during that period? Can you state when and with whom you had such conversations?

A. Well, one of them, Mr. Simi.

Q. When did you have the conversation with him?

A. That was prior to elections. That was in—I think just before we had the other ticket to come in. I don't know if it was '51 or '52 but it was Mr. Simi.

Q. I am referring to the period after your expulsion in March, 1952. Now, did you have any such conversations after March, 1952?

A. Not with Simi. I had with John Wagner up in the hall.

Q. John Wagner. Who is he?

A. John Wagner, he was a business agent then, but he was defeated.

Q. He was at that time, a business agent?

A. No, he was defeated. He was——

Q. He was an ex-business agent?

A. Ex.

Q. All right, who else was present?

[fol. 139] A. And——

Mr. Kennedy: Your Honor—excuse me—I am going to object to any further line of this testimony as being just too remote on any of the issues that Counsel is presenting. It has to do with conversations between union members and I can't—if he states briefly, or it seems to me he could state if he is worried or anxious, and so forth, and this other seems to be too far afield to have any particular significance.

Mr. McMurray: I am going into it, your Honor, because counsel objected to the testimony as too indefinite when I attempted to——

The Court: I take it you are trying to show humiliation?

Mr. McMurray: I am, your Honor, yes.

The Court: Well, Counsel says he makes no objection to your asking the general question whether he was humiliated. Is that it?

Mr. Kennedy: It seems to me that that would be the way to approach it. I certainly don't—I apologize for suggesting how things should be done, but I also might object on another ground, also, but——

The Court: Well, how else would you show humiliation except by what people said or did to him and his reaction to it?

Mr. Kennedy: I think you could show humiliation, and [fol. 140] I am not trying to be facetious here, in circumstances that were intrinsic-ly humiliating. I think these are very equivocal. They suggest other lines of inquiry, and they are not self-definitive as being humiliating. He stated he is kidded and he had conversations that people didn't support—

The Court: I think you are correct. I think those are conclusions again. We are back to how a person interprets—whether or not he was humiliated is a fact under the proposed amended pleading, whether I considered certain conduct directed to him and his reaction to it as humiliation, but once again, we are back to the thick skin, I suppose. It is for me to conclude whether a person would be humiliated by certain observations, losing an election may be humiliating and may not. I don't know. But certainly I have never had the experience, fortunately, but I can see where it could be humiliating, and also be distressing. He is talking now mostly with reference to the fact that a certain ticket which he was on, had lost out, and that may be beyond the issues in this case.

Mr. Kennedy: That was the specific thing that prompted me—

The Court: I think your objection is well taken to that. I think that he should be confined, Mr. McMurray, to what the expulsion did to him.

Mr. McMurray: I intended to confine the question to that.

[fol. 141] Q. Mr. Gonzales; will you bear this in mind, these questions that I am asking you now to have to do with what occurred after the expulsion and after your experiences which resulted from the expulsion. Now, you mentioned the conversation that you had after your expulsion.

A. Yes.

Q. With the man who had formerly been a business agent. What was his name?

A. John Wagner, and the other man was Eddie Conlin. He was a dispatcher at that time—Eddie Conley.

Q. Where did this occur?

A. Right in the hallway, he usually gets around there.

He come in to pay dues for a bunch of boys, and so I met him in the hall about 3:00 o'clock.

Q. In the union hall?

A. Yes, and then Eddie Conlin happened to come in and walked downstairs and they begin ribbing me and telling me about my situation.

Q. What did they say?

A. Well, they said, "There you are. You have your boys in there now." He says, "Now, what can they do for you?" He says they just—I was always on the wrong side of the fence. He says, "You should have listened to us and stayed with us," and so forth. That is John Wagner, and Eddie Conlin telling me the same thing. He says, "Those fellows are just contrary." They just razzed me about them and he told me that they never send me out on a job because. [fol. 142] Eddie Conlin, once in awhile, he sneak me out on a job. He used to give me a dispatch, and he says, "You see, I used to give you a job, and I let you work once in awhile; these other fellows don't do it." I says, "That's all right." I says, "Eventually the truth will all come out and I will take it as I have been taking it," and I says, "It can't be any worse now and I will just suffer the consequences."

Mr. Kennedy: Excuse me. I feel that his conversations in any—

The Court: Yes, I will strike it.

By Mr. McMurray:

Q. Now, were you allowed—were you admitted into the union hall at all times after your expulsion?

A. Yes.

Q. Were you ever thrown out or told to get out after your expulsion?

A. No, sir.

Q. You were allowed to come in?

A. Yes.

Q. And you frequently went down there among the men that you had associated with before your expulsion?

A. Yes.

Q. And was it a matter of discussion and common knowl-

edge there, that you were unemployed because of your expulsion?

A. Yes. They always talked to me about that.

Q. And as a machinist, had you been unemployed during the past several years when you were physically able to work?

A. Well, I was yes, prior to this time, a couple of— [fol. 143] several times on account of injuries on the job, and other times, because I was on what they call the black list, and that is one thing I fought so, before the Executive Board, to bring these jobs up and throw them out to any man that is in the hall. I argued that point whereby no more of this tabling these jobs that are called in because I proved it there before the Executive Board that I was black listed, and once I had George Ingles from the Triple A Machine Company, I and three other boys went down there, and we used to go up to the hall.

Q. Just a minute, Mr. Gonzales. Let's get back to the thing here that we are interested in. When you were able to work—

A. Yes.

Q. —during the several years before your expulsion, your expulsion was in 1952?

A. Yes.

Q. During 1952—1951, 1950, when you were physically able to work, had you been unemployed?

A. No.

Q. And during this period, did you have any other source of income than what you were able to earn yourself?

A. No.

Mr. McMurray: I think that is all, your Honor.

Cross examination.

By Mr. Kennedy:

Q. Mr. Gonzales, I believe at the last hearing you said you were in the hospital?

A. Yes, I still am.

[fol. 144] Q. You are still in the hospital, and I don't recall, but I think you stated when you first went in there, what date was it?

A. Last day of—I think it was June 28th.

Q. Of 1953?

A. Yes.

Q. Now did I understand you, or was it your testimony that you were working steadily in 1949 and 1950?

A. No, because I just said that I had a couple of—I believe I was injured a couple of times, around once or twice there, I got hurt on the job, and I was off for a little time, personal injuries.

Q. Now, going back to say, June of 1950, now you remember that this trial that you had was in August of 1950, did you remember—or I will say June of 1949, so for a year before that you were tried even by the local, isn't it a fact that you were working very irregularly then?

A. Yes, I just said why I stated my reasons, I was working irregular all the way through since the new—Charlie Truax took over the lodge.

Q. But you were a member in good standing, in the union?

A. Yes, but I know, but there was so many—so much going on I happened to know when they were bringing in forty or fifty members when we had seventy unemployed, and I objected to all that.

Q. It is also true that you were working very infrequently after this trial which was in August of 1950, up until March [fol. 145] of 1952, although during that period, you were also in good standing as far as the local union went, isn't that correct?

A. All of that time while the other administration was in there, I was working irregular. I wasn't on, just getting these little two by four jobs most of the time there.

Q. But they were taking your dues?

A. Oh yes, they took my dues.

Q. And would you say that you continued to work just as irregularly after this trial as for a year—

A. The trial at that time, in '50?

Q. Yes.

A. Well, I was expelled twice.

Q. But after the August 1950 local trial, you still went up to the union hall and you still submitted your dues, did you not?

A. Yes, sir.

Q. And during that period for substantially a year before 1950 and up to March of 1952, or at least until November of 1951, for each one of those months you took an out of work stamp or paid for an out of work stamp, didn't you?

Mr. McMurray: I am going to object to the question as unintelligible.

The Witness: Yes, but a couple of times——

The Court: Do you understand the question?

The Witness: Well, yes, I claimed that I got—wasn't employed up to 1950, and during that time I was injured. I stated that I was injured several times and I couldn't be [fol. 146] employed, I was injured, but I was on compensation.

By Mr. Kennedy:

Q. Now when was it, Mr. Gonzales that these union officials stated that their hands were tied? Was that—and that they couldn't send you out to a job, was that immediately after March of 1952?

A. Yes, that was after the elections when we had the new administration in there.

Q. Well, I think—I may not have been clear there.

A. Yes.

Q. You remember that in March of 1952, there was what we call the final action, the local notified you they wouldn't take dues anymore, and you were no longer a member in good standing?

A. That's right.

Q. At that time you received formal notification that you were no longer in Lodge 68?

A. That's right.

Q. Now what I am get-ting at now is how long after that did the union officials tell you their hands were tied, that they couldn't send you out to any jobs?

A. Why, it was right on March 5th, when I met Frank—he is a union official, he is a business agent—and I talked to him when they wouldn't take me back. I had laid off—I was off about a week and a half, and I had medical, that is, doctor's certificates whereby I was capable of going back to work, and at thtt time they hired a couple of new men and

[fol. 147] there was a call, four men I knew, so I went down there.

Q. At any rate, right around there?

A. No, it was March 5th I talked to Frank in regards to why I couldn't continue my job.

Q. There was—

A. He said, "You can't."

Q. That answers the question. Now, and then the only other thing I want to ask you about that is: Is that after that you still were back at the union hall once a week or more frequently?

A. Well sometimes I'd be there two times; sometimes I'd leave it, go the following week, but I usually went up there pretty often.

Q. And you continued to go until in mid 1953 when you went into the hospital?

A. Oh, yes, I was up there, I believe about a week—four or five days before I went to the hospital.

Q. I see.

A. That was the last time that I have been up there, see if I can get some employment.

Mr. Kennedy: That is all, thank you.

Redirect examination.

By Mr. McMurray:

Q. Mr. Gonzales, you were injured and disabled on February 17th, 1944, were you not?

A. Yes.

Q. While you were working on the job?

A. Yes.

[fol. 148] Q. And again in June of 1946?

A. Yes.

Q. And then injured again on June 25th, 1949, were you not?

A. Yes, sir.

Q. And again on January 1st, 1951?

A. Yes.

Q. And on February 5th, 19—no—yes, February 5th, 1952, you had another injury?

A. Yes.

Q. These injuries were to your back for the most part, were they?

A. Yes, sir.

Q. And they resulted in certain claims filed by you with the Industrial Accident Commission for workmen's compensation?

A. Yes.

Mr. McMurray: Your Honor, in view of the lateness of the hour, I wonder if it would be possible for me to confer with Mr. Kennedy after the trial so that with a view to preparing a stipulation showing the periods, as shown by the records of the Industrial Accident Commission, I have in my files here the periods during which Mr. Gonzales was unable to work, and received compensation in those cases. Now if I take the cases one by one, it is going to consume considerable amount of time, and I have the files here and they were rather lengthy, and Counsel would be in agreement with that and the Court would sanction it, I thought we might get this matter straightened out. It is a matter of factors, over which there can't be very much dispute at all, and [fol. 149] put in a stipulation.

Mr. Kennedy: As far as what the records of the Industrial Accident Commission show, I would not raise any question as to their authenticity or—

The Court: These are all before the expulsion?

Mr. McMurray: Yes, they are. It goes to the matter of the times during which the Plaintiff paid out of work dues.

The Court: In view of the fact that we let the other time sheet in, it probably would tie in with that to show—

Mr. Kennedy: If I may suggest this, it may save a little time and effort if you think it is agreeable—if this witness can approximate the periods that he was off work, it is perfectly agreeable with me, and I don't think a few weeks either way would have any significance if he knows in 1949 in June he was injured.

The Court: I think he's already testified to that, hasn't he?

Mr. McMurray: I believe that he testified to some of

that, but not for this purpose, so that probably it was not as definite as it ought to be.

The Court: Can you tell us what period you were disabled under workmen's compensation?

By Mr. McMurray:

Q. After June, 1949 injury, your Honor.

The Court: Yes.

By Mr. McMurray:

Q. Start there.

[fol. 150] The Witness: Your Honor, that is pretty hard to remember the time I was off.

The Court: Do those records show an exact date?

Mr. McMurray: Your Honor it would be possible to get them here, but I don't—it wouldn't be—

The Court: Well, would you stipulate, Mr. Kennedy that after looking at the records yourself, that whatever information Mr. McMurray gives to me in that respect, may be considered as evidence?

Mr. Kennedy: Yes, your Honor, with this thought: That in these cases usually there are two avenues, as I understand it, either there is a hearing held and an award is issued, or else there is a compensation paid for a certain period, and unless there was a hearing held, there wouldn't be any records.

The Court: I take it they are cases in which there were hearings?

Mr. McMurray: Yes, there were hearings and compensation was paid.

Mr. Kennedy: That would certainly be agreeable.

The Court: All right. So it is stipulated that whatever communication is directed to me by Mr. McMurray, to which you will stipulate I can consider evidence in this case—

Mr. Kennedy: Yes.

The Court: And it will be admitted as Plaintiff's Ex-
[fol. 151] hibit next in order.

Mr. McMurray: All right. With that then, your Honor, the Plaintiff will close the evidence admitted.

The Court: All right, is the matter submitted?

Mr. McMurray: I will submit the matter, your Honor.

Mr. Kennedy: Yes.

[fol. 154]

[File endorsement omitted]

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF
CALIFORNIA IN AND FOR THE FIRST APPELLATE DISTRICT

Division One

MARCOS GONZALES, Petitioner and Respondent,

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS, ETC., et al.,
Respondents and Appellants.

ORDER GRANTING PETITION FOR REHEARING—March 16, 1956

BY THE COURT:

The petition for rehearing is granted. Counsel are directed to brief the question of the applicability, if any, of the Taft-Hartley Act to the issue of damages. Appellant granted 10 days. Respondent granted 10 days thereafter to reply. Cause then to be submitted.

Dated March 16, 1956.

PETERS, P.J.

[fol. 155] IN THE DISTRICT COURT OF APPEAL, STATE OF
CALIFORNIA, FIRST APPELLATE DISTRICT

Division One

1 Civil No. 16,536

MARCOS GONZALES, Petitioner and Respondent,

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS, ETC., et al.,
Respondents and Appellants.

OPINION—June 12, 1956

The superior court rendered judgment reinstating petitioner in the International Association of Machinists and awarding him \$6,800 damages for loss of wages and \$2,500 for mental distress. All respondents¹ in the lower court are appellants here.

[fol. 156] QUESTIONS PRESENTED

1. Was petitioner excused from exhausting his administrative remedies?

2. Did the lodge violate the constitutions of the organization?

3. Are the International President's interpretations binding on the courts?

4. Damages: Does the Labor Management Relations Act, 1947, 29 U.S.C.A. § 141 et seq. (Taft-Hartley Act) apply?

¹ They are the International Association of Machinists, an unincorporated association, Thomas E. McShane, and A. C. McGraw, as International Representatives thereof; International Association of Machinists, Local Lodge No. 68, an unincorporated association, Robert Roller, as President of said Local Lodge, Reese Conte, as Secretary of said Local Lodge, Edward Peck, as Treasurer of said Local Lodge.

FACTS

This proceeding grew out of the recommendation in 1948 by petitioner, as a member of the investigating committee of the lodge, that one Nelson be denied admission to membership. Thereafter petitioner was physically assaulted by Nelson. Petitioner, believing that the assault was instigated by Charles Truax, who was the International Representative, filed suit in the superior court against both Nelson and Truax for damages for injuries received in the assault. A nonsuit was granted in favor of Truax and a judgment in favor of petitioner against Nelson for \$10,000. July 7, 1950, petitioner was tried by the trial committee of the lodge for violation of article XXV, section 1, Grand Lodge Constitution.² July 19th, the trial committee at [fol. 157] the regular bimonthly meeting submitted to the lodge its verdict—"guilty as charged," and its recommendation that petitioner be expelled from the association. Thereupon pursuant to article K, section 7 of the constitution, the membership present voted on the action of the committee.³ The vote was 43-31 against sustaining the verdict.⁴ August 2, 1950, at a regular meeting a motion was made to rescind the action of July 19th rejecting the verdict of the trial committee. A standing vote showed 38 yes, 4 no. Thereupon a secret ballot vote was taken on a motion to sustain the "guilty" verdict of the committee. This resulted in 31 yes, 12 no, and 2 blank ballots. A secret ballot vote was then taken on a motion to expel petitioner from the

² " . . . any member . . . circulating or causing in any manner to be circulated any false or malicious statement . . . falsely or maliciously attacking the character, impugning the motives or questioning the integrity of any officer of the Grand Lodge . . . " The charges were preferred by Truax and were based upon the allegations in petitioner's complaint in the civil action that Truax directed and ordered Nelson to perpetrate the assault and battery on petitioner.

³ This provides that the recommendation of the committee may be amended, rejected, or another punishment substituted by a majority vote of those voting. To expel, however, the required vote is two-thirds of those voting.

⁴ July 28, 1950, Truax appealed to the Grand Lodge from this action of the lodge. August 22d, he withdrew his appeal.

association as recommended by the committee. This resulted in 29 yes, 14 no, 1 blank. August 2d petitioner appealed to the International President from this action of the lodge, claiming among other things that the action of the lodge on August 2d, after his vindication on July 19th, was a violation of the constitution, and also that the vote for his expulsion was not the required "two-thirds ($\frac{2}{3}$) vote of those voting." November 13th, the International President sent a letter to the president and secretary of the lodge, in which he made formal findings, conclusions [fol. 158] and decision. He upheld the conviction of petitioner, but decided that expulsion was too severe a penalty and then modified the penalty to a fine of \$500 to be paid the lodge, and a "complete and appropriate apology" in writing from petitioner to Truax, copy thereof to be sent to the president. January 30, 1951, petitioner received a letter from the General Secretary-Treasurer of the International to the effect that on his appeal of the decision of the International President to the Executive Council that body had unanimously sustained the decision. "Accordingly, President Hayes' decision of November 13, fining you \$500.00, becomes the decision of the Executive Council, and our records have been so indicated." February 23, 1951, in reply to a letter from petitioner, asking the course to be followed in appealing the decision of the Executive Council, the General Secretary-Treasurer wrote petitioner calling attention to section 6, article XXV, of the constitution⁵ which provides for appeals to a convention of the Grand Lodge and stated that his appeal could not be sent to the convention nor considered by it "until you have carried out the decision of the Executive Council, which means you must pay the fine of \$500.00 before you can appeal to the

⁵ Before any appeal can be taken to the convention or to the membership, at large by referendum, "all orders of the Executive Council in relation thereto, must be fully complied with . . . and in no case shall . . . any . . . member . . . appeal to the civil courts for redress until after having exhausted all rights of appeal under the provisions of this Constitution." Section 10, article K, constitution, likewise requires that a member of a local lodge must exhaust all rights of appeal under the constitution of both the Grand Lodge and the local lodge before appealing to the courts.

convention." February 11, 1952, the lodge's financial secretary [fol. 159] notified petitioner that the lodge would no longer accept dues from him until he had complied with the president's decision by paying the \$500 fine and making a complete and appropriate apology to Truax. February 20th, petitioner formally refused to pay the fine or make apology. December 3, 1952, petitioner filed his application for a writ of mandate in the superior court.

Whatever confusion there may have been in this state as to the right of a trade union member to appeal to the courts for redress from his union's action, without first exhausting all remedies provided by its constitution and by-laws, such confusion has been resolved and a definite rule established in the recently decided *Holderby v. International Union etc. Engineers*, 45 Cal.2d 843 [291 P.2d 463]. There the plaintiff was expelled from the union in complete violation of the union's constitution. In holding that he could not appeal to the courts without first availing himself of the remedies provided in the constitution for a review by the general board of the action taken against him, the court refused to follow cases like *Weber v. Marine Cooks' & Stewards' Assn.*, 93 Cal.App.2d 327 [208 P.2d 1009], which had held that "where an organization has violated its own laws and arbitrarily violated a member's property rights the rule of exhaustion of remedies by appeal to a higher body within the organization need not be adhered to before direct resort to a judicial tribunal." (P. 338.) It then ruled that the union member must exhaust the union remedies before he may appeal to the courts, no matter what the [fol. 160] initial violation of union rules may have been, and that the only exception to the general rule is if there has been a violation of the rules on appeal. "It is only when the organization violates its rules for appellate review or upon a showing that it would be futile to invoke them that the further pursuit of internal relief is excused. The violation of its own rules which inflicts the initial wrong furnishes no right for direct resort to the courts." (P. 849.) Therefore we are limited to a determination of whether the union rules on appeal were violated in any respect or whether further pursuit of internal relief is excused.

1. *Administrative Remedy.*

Petitioner followed his administrative remedy through an appeal to the International President and then from his decision to the Executive Council. He did not proceed with an appeal either to the convention of the Grand Lodge or to the membership at large. He was barred from so doing by the requirement that he first fully comply with the orders of the Executive Council.

Petitioner contends that the International President and the Executive Council violated the union rules on appeal in deciding that the required two-thirds vote had expelled him and in changing the penalty from expulsion to a fine and apology. As to the finding of the president that there was a two-thirds vote in favor of expulsion, such finding, if erroneous, could not alone justify noncompliance by petitioner with the appeal rules of the organization. Just as a [fol. 161] court has the power to decide wrongly as well as rightly, the president on appeal likewise has such power and a wrong decision is not the violation of the organization's rules on appeal which under the Holderby case justifies the member in refusing to further follow the union's rules on appeal. The constitution provides (art. V, § 1) that the president shall decide all constitutional questions subject, however, to the right of appeal.* However, the imposition of an apology requirement would appear to be in a different category. Article XXV, section 1, the section which petitioner was charged with violating, provides a penalty of fine or expulsion, or both. That section is in the Grand Lodge constitution. In the local lodge constitution (art. K, § 7) it is provided that the membership may substitute another punishment for that recommended by the trial committee. It is questionable whether this gives the mem-

* Nor do we think that the president violated any rules in prescribing a fine *prior to approval* thereof by the Executive Council. Section 8, article K, provides that no fine in excess of \$50 "shall be imposed upon any member . . . unless the same is first approved by the Executive Council." Having in mind that under the appellate procedure an appeal is first to the president and thereafter to the Executive Council, and that this provision is in the constitution of the lodge and not in that of the Grand Lodge, it is obvious that it does not apply to a decision on appeal.

bership the right to substitute any penalty other than that included in the phrase "fine or expulsion or both" in the penalty section of the Grand Lodge constitution. However, we can find no authorization to the president, upon appeal, to change the penalty voted by the lodge. It would appear that his authority is either to affirm or reject the action of the lodge, and in the event he affirms its action in finding [fol. 162] a member guilty but, as here, feels that the penalty is too great, he may reverse the penalty but the determination of the new penalty is for the lodge and not for him. It may be that had the president merely reduced the penalty to a \$500 fine, petitioner could not complain of a departure from the rules so obviously in his favor, as a fine is included in the penalties provided by the constitution. But the requirement of an apology is an entirely different matter. Nowhere is there a provision for such a penalty and it is completely outside the penalties prescribed. This action then constituted not only a violation of the organization's rules for appellate procedure but it brings the case under the second situation stated in the Holderby case, namely, "that it would be futile to invoke" the further appellate rules. They provide that to go further with his appeal petitioner must comply with all orders of the Executive Council. Thus to gain redress petitioner must pay a fine which the president and the Executive Council had no right to impose and to make an apology which neither had the right to require. While the fine money could be refunded if the convention were to reverse the Executive Council's decision, there is no way in which the apology could be wiped out. The effect of these requirements was to prevent petitioner from proceeding further and gave him the right to appeal to the courts for relief.

Appellants contend that the action of the Executive Council, in effect, eliminated the president's requirement of an apology. The General Secretary-Treasurer on January 30, 1951, notified petitioner: "Inasmuch as you failed to supplement your letter of November 16, the Executive [fol. 163] Council, at its recent meeting, carefully appraised all the facts as presented in the correspondence dealing with your case and, after due deliberation, by unanimous

action, voted to sustain the International President's decision: Accordingly, President Hayes decision of November 13, fining you \$500.00, becomes the decision of the Executive Council. * * * " (Emphasis added.) On February 23d he notified petitioner that an appeal to the convention, if made, could not be "processed" "until you have carried out the decision of the Executive Council, which means you must pay the fine of \$500.00 before you can appeal to the convention." On February 11, 1952, the financial secretary of the lodge notified petitioner that the lodge could not accept dues from him until he paid the \$500 fine *and made a complete and appropriate apology*, sending copy to the International President. "This is in accordance with the decision" of the president "and sustained by the Executive Council. * * * " It is difficult to understand how the Executive Council "voted to sustain the International President's decision" if it deleted therefrom the apology requirement. Certainly the lodge interpreted the action of the Executive Council as requiring the apology as well as the fine. At the trial counsel for appellants stated: " * * * it is true that in order to comply with the decision of the International President that the Plaintiff would have to pay \$500 and we don't dispute that at all, and *it also appears that he would have to make an apology.*" (Emphasis added.) In any event, as a result of the appeal brought by petitioner, he finds himself ousted from his union because of nonpay-[fol. 164] ment of dues, which he would pay but it will not receive, and denied his right of further appeal because he will not do something which the appellate bodies had no right to require him to do. It should be remembered that being ousted or expelled from a union is a matter of much greater consequence than expulsion from a fraternal organization. In the former case, in most instances it means a loss of a member's job, and therefore, his means of making a living. Especially is this so when employers of the type of labor provided by members of this organization only hire through the union hiring hall. At the very least, his no longer belonging to the union would be a serious handicap in the labor market.

The facts bring this case under the exception to the general rule of exhaustion of administrative remedy. We are

therefore required to consider whether the acts of the lodge violated the constitution of either the Grand Lodge or the local lodge.

2. *Lodge Violations.*

There is no provision in either constitution for rescinding the action of the membership in voting on the recommendations of a trial committee.⁷ Appellants support such action, however, by contending that the procedure was in accordance with Robert's Rules of Order and that the constitutions make those rules applicable. Article G, section 2 of the local lodge constitution provides: "The Rules of Order [fol. 165] governing parliamentary procedure shall be printed in the copies of the Constitution of the Grand Lodge, and no other rules shall apply." In these rules there is nothing upon the subject with which we are here concerned. Article II, section 11 of the Grand Lodge Constitution makes Robert's Rules of Order the parliamentary law of both the Grand Lodge and the local lodge "except in cases otherwise provided for by this Constitution." If there is any conflict between Robert's Rules and the provisions of either constitution the latter must necessarily prevail. (See *Harris v. National Union of Marine Cooks & Stewards*, 98 Cal.App.2d 733, 736 [221 P.2d 136].) The lodge constitution requires that voting on the recommendations of the trial committee be by secret ballot. It would seem to conflict with this requirement to permit a vote to rescind such action to be taken in a less formal way. Here it was taken by a standing vote. At the very least this violated the spirit of the constitution. Moreover, Robert's Rules provide (§ 10, subd. 5, p. 50, Robert's Rules of Order, Revised Seventy-fifth Anniversary Edition): "At any future session, the resolution, or other main motion, may be rescinded *in the same way if it had been adopted; * * **" (Emphasis added.) The action taken here violated that provision. We hold that attempting to rescind an action required to

⁷ Truax having appealed to the president from the action taken on July 19th, it is very doubtful if the membership under any theory could modify or rescind the action which was then on appeal.

be taken by a secret vote, by a standing vote, is a violation of the constitution and of the rules and was therefore void.

The action of rescission was taken in petitioner's absence. *Ellis v. American Federation of Labor*, 48 Cal.App.2d 440 [120 P.2d 79], holds (pp. 443-444): "It is settled however [fol. 166] in this state and elsewhere that a member of an unincorporated association may not be suspended or expelled, nor a subordinate body suspended or its charter revoked, without charges, notice and a hearing, even though the rules of the association make no provision therefor." While petitioner had notice of the proceedings up to the action exonerating him on July 19th, the action purported to be taken on August 2d was taken without notice and in his absence. The above mentioned rule would apply to such action. Such action violated "those rudimentary rights which will give him a reasonable opportunity to defend against the charges made. * * * The union's procedure, however, must be such as will afford the accused member substantial justice, and the requirements of a fair trial will be imposed even though the rules of the union fail to provide therefor." (*Cason v. Glass Bottle Blowers Assn.*, 37 Cal.2d 134, 143 [231 P.2d 6, 21 A.L.R.2d 1387].)

Moreover, the vote on the question of expulsion did not produce the required "two thirds ($\frac{2}{3}$) vote of those voting." There were 29 yes votes, 14 noes and 1 blank cast, or a total of 44 votes. The casting of a blank ballot is voting. To constitute a two-thirds vote of those voting it was necessary to get 30 votes. As only 29 affirmative votes were cast the measure failed and the attempted expulsion cannot stand.*

* While the trial court found that the action of petitioner in charging Truax in the civil action with directing and ordering Nelson to assault him violated article XXV, section 1, "falsely or maliciously attacking the character, impugning the motives or questioning the integrity of any officer of the Grand Lodge" (Truax was such an officer) we deem it unnecessary to consider this finding for the reason that by the action of the membership on July 19th in rejecting the trial committee's finding, the matter has become academic.

[fol. 167] 3. *President's Interpretation.*

Appellants contend that the president's interpretation of the constitutions as giving him the power to impose the fine and apology, in holding the rescinding action of the lodge as proper, and in determining that the blank ballot should not be counted in determining the votes cast, is binding upon the courts. This contention is based upon the rule set forth in *DeMille v. American Federation of Radio Artists*, 31 Cal.2d 139, 147 [187 P.2d 769, 175 A.L.R. 382]: "The practical and reasonable construction of the constitution and by-laws of a voluntary organization by its governing board is binding on the membership and will be recognized by the courts." But the construction placed upon such actions by the president in this case cannot be held to be reasonable under the circumstances. "A clearly erroneous administrative construction of a definite and ambiguous provision of the constitution cannot operate to change its meaning." (*Harris v. National Union of Marine Cooks & Stewards*, *supra*, 98 Cal.App.2d 733, 737; see also *Mandraccio v. Bartender's Union Local 41*, 41 Cal.2d 81, 85 [256 P.2d 927]; *Riviello v. Journeyman Barbers etc. Union*, 109 Cal.App.2d 123, 128-129 [240 P.2d 361].)

We are not impressed by the fact that the president stated in effect that his conclusion would not have been different if he were considering Truax's appeal from the first action of the lodge rather than petitioner's appeal [fol. 168] from its second action. It is only the latter situation with which we have to deal.

4. *Damages: (a) Jurisdiction.*

In determining the question of whether the exclusive jurisdiction to grant damages in a case of this kind lies in the Labor Relations Board, it is first necessary to determine the character of the pleadings and issues in this case. The petition alleged a breach of contract between the union and plaintiff, one of its members.⁹ It took the form of a

⁹ See *Harris v. National Union of Marine Cooks & Stewards*, *supra*, 98 Cal.App.2d at p. 736: "The constitution of the union constitutes a contract with the members * * *."

petition for writ of mandate because damages alone would not be adequate to restore to petitioner the things of value he had lost by reason of the breach. No charge of "unfair labor practices" appears in the petition. The answer to the petition denied its allegations and challenged the jurisdiction of the court, but said nothing about unfair labor practices. The evidence adduced at the trial showed that plaintiff, because of his loss of membership, was unable to obtain employment and was thereby damaged. However, this damage was not charged nor treated as the result of an unfair labor practice but as a result of the breach of contract. Thus the question of unfair labor practice was not raised nor was any finding on the subject requested of, or made by, the court.

So far as plaintiff's improper expulsion from the union is concerned, there could be no question of unfair labor practice:

[fol. 169] The Taft-Hartley Act prescribes in part: "(b) It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: PROVIDED, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; . . ." (29 U.S.C.A. § 158; emphasis added.) In construing this section the courts have held that the courts have jurisdiction to restore union membership to a member improperly deprived thereof by his union. As said in *Mahoney v. Sailors' Union of the Pacific* (1954), 45 Wn.2d 453 [275 P.2d 440], improper expulsion by the union does not constitute an "unfair labor practice" which under the act takes jurisdiction away from the courts. (See also *Real v. Curran*, 285 App.Div. 552 [138 N.Y.S.2d 809].)

So far as the award of damages is concerned, it was awarded not for an unfair labor practice, but for breach of contract and as incidental to the restoration to plaintiff of his right of membership. The contention that the Labor Relations Board has sole jurisdiction of the question of damages in a case of this kind was made and answered in *Taylor v. Marine Cooks & Stewards Assn.*, 117 Cal.App.2d 556, 564 [256 P.2d 595]: "Appellants argue that these dis-

putes are solely cognizable by the National Labor Relations Board under the Taft-Hartley Act. (29 U.S.C.A. § 158 (b) 2.) The damages suffered by respondents were an incident of the wrongful act of appellant union in taking disciplinary [fol. 170] action against them in a manner which was violative of their rights under the constitution of the union. Nowhere in the Taft-Hartley Act is the N.L.R.B. given jurisdiction or authority to review the legality of any disciplinary action taken by a union against one of its members or to order a member's reinstatement in the union or to award damages resulting from his wrongful expulsion. These powers are left in the courts of law where they have always resided. We find nothing in the Taft-Hartley Act to deprive a court of the power to do complete justice between a wrongfully disciplined member and his union by allowing such damages as he may have suffered as an incident to the judgment restoring him to the rights within the union of which he had been illegally deprived."

There are many cases holding it to be an unfair labor practice for a union in any way to cause an employer to fail to employ an expelled member (whether the expulsion be proper or improper), and that the National Labor Relations Act authorizes the Labor Relations Board to compensate the member for loss of earnings if lost through the procedures followed by the union whereby employers were caused to discriminate against such members. (*Real v. Curran, supra*, 138 N.Y.S.2d 809.)¹⁰ But in all those cases [fol. 171] the charge was made that the acts of the union constituted unfair labor practices and such charge was an issue in each case. As we have pointed out it was not an issue here. In *Weber v. Anheuser-Busch, Inc., supra*, 348 U.S. 468, where the issue was whether the unions were guilty of unfair labor practices the court must have had this very distinction in mind for after referring to the

¹⁰ Among other cases are: *Born v. Laube*, 213 F.2d 407, cert. den. Oct. 18, 1954, 348 U.S. 855 [75 S.Ct. 80, 99 L.Ed. 674]; *Radio Officers v. National Labor Relations Board*, 347 U.S. 17 [74 S.Ct. 323, 98 L.Ed. 455]; *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468 [75 S.Ct. 480, 99 L.Ed. 546]; *Mahoney v. Sailors Union of the Pacific, supra*, 275 P.2d 440; *Sterling v. Local 438, etc. Assn.* (1955), 207 Md. 132 [132 A.2d 389].

"delicate problem of the interplay between state and federal jurisdiction touching labor relations" (p. 474) and after stating (p. 480) "the Labor Management Relations Act 'leaves much to the states, though Congress has refrained from telling us how much'" (quoting from *Garner v. Teamsters etc. Union*, 346 U.S. 485, 488 [74 S.Ct. 161, 98 L.Ed. 228]) it prefaced its conclusion that the state court did not have jurisdiction of the unfair labor practices charged, as follows: " * * * where the moving party itself alleges unfair labor practices * * * " (P. 481; emphasis added.) In *United Const. Workers v. Laburnum Const. Corp.*, 347 U.S. 656 [74 S.Ct. 833, 98 L.Ed. 1025], the court held that the National Labor Relations Act did not give such exclusive jurisdiction to the National Labor Relations Board as to deprive a Virginia state court of jurisdiction to try a common law tort action brought by a construction company against a union even though the United States Supreme Court assumed the conduct constituted an unfair labor practice under the act.¹¹

[fol.172] In *Real v. Curran*, *supra*, 138 N.Y.S.2d 809, where a member allegedly was illegally expelled from his union, the court held that the Labor Relations Board could only act where there was an unfair labor practice, that improperly expelling the member did not constitute such practice and hence the board had no power to restore his union membership. Therefore it held that there was nothing in the Labor Relations Act which would affect the law which had long existed in New York that a wrongfully expelled member of a labor union was entitled to restoration by the state courts to union membership and "in a proper case, damages for consequent loss of wages." (P. 811.) "It is, therefore, concluded that the provisions of the Labor Management Relations Act, 1947, do not exclude the State courts from their traditional jurisdiction to restore to membership a wrongfully expelled member of the union." (P. 814.)

In *International Union, etc. C.I.O. & Local 660 v. Hinz*, 218 F.2d 664 (U. S. Ct. of Appeals, 6th Cir., 1955), the plaintiff sued the union in the state court of Michigan for

¹¹ It is significant that there, as here, the trial court made no finding that the acts in question did constitute unfair labor practices.

damages (not for reinstatement in the union) charging that his union membership had been wrongfully terminated, and asking both compensatory and exemplary damages for loss of wages, etc. The union filed a complaint in the U. S. District Court praying for an injunction against the prosecution of said suit in the state court. In upholding the action of the District Court in dismissing this complaint, the reviewing court held: "Appellee's work did not cease as a consequence of a current labor dispute nor be- [fol. 173] cause of an unfair labor practice." (P. 665.) "The Board has no jurisdiction in disputes between a union and its members nor authority over the internal operation of a union." (P. 665.) See also *Amalgamated Clothing Workers of America v. Richmond Bros. Co.*, (6 Cir.) 211 F.2d 449, and *International Union of Electrical, Radio & Machine Workers, C.I.O. v. Underwood Corp.*, 219 F.2d 100).

In *Holderby v. International Union of Operating Engrs.*, *supra*, 45 Cal.2d 843, the plaintiff filed an action in which he sought and obtained reinstatement as a member in good standing in the union and damages resulting from his alleged unlawful exclusion therefrom. While the Supreme Court reversed the judgment on the ground of the plaintiff's failure to exhaust his administrative remedy, it is interesting to note that the court nowhere intimates that it did not have jurisdiction of the subject matter of the action. Likewise in *Weber v. Marine Cooks & Stewards Assn.*, 123 Cal.App.2d 328 [266 P.2d 801], the plaintiff sued for reinstatement in his union after an alleged wrongful expulsion and for damages in the loss of wages and for mental suffering (just as plaintiff did here). The trial court granted a motion for nonsuit on the ground of laches alone. The reviewing court reversed the judgment and sent the case back for trial. It evidently had no doubt concerning its jurisdiction.

The language of William J. Isaacson in his article, "Labor Relations Law: Federal versus State Jurisdiction," appearing in the May, 1956, *American Bar Association Journal* (vol. 42, No. 5, p. 415) is applicable here. [fol. 174] After calling attention to the fact that there is a conflict between the courts, both state and federal, which

have considered the question here involved, and that the United States Supreme Court has not passed upon it, and then referring to *Real v. Curran*, *supra*, 138 N.Y.S.2d 809, and *Mahoney v. Sailors' Union of the Pacific*, *supra*, 275 P.2d 440, the article then states (p. 483): "Although even these state court decisions may lead to possible conflict between the federal labor board and state courts they do not present potentialities of conflicts in kind or degree which require a hands off directive to the states. A state court decision requiring restoration of membership requires consideration of and judgment upon matters wholly outside the scope of the National Labor Relations Board's determination with reference to employer discrimination after union ouster from membership. The state court proceedings deal with arbitrariness and misconduct viz-a-vis the individual union members and the union; the Board proceeding, looking principally to the nexus between union action and employer discrimination, examines the ouster from membership in entirely different terms."

Damages: (b) Award.

Appellants contend that there is no evidence to support the award of \$6,800 damages for loss of wages.¹² Petitioner testified that his earnings were nearly always \$100 per week at least, and frequently between that figure and \$200. [fol. 175] At the time of his expulsion from the union he was employed as a marine machinist by the General Electric Company. About four days thereafter he was injured on the job, incapacitated approximately three weeks. The ordinary practice was for employers to telephone the union hall for men, and the union members would be dispatched to the work. Thereafter he applied to the union for an assignment to a job as he had done prior thereto. He was refused dispatch by the union dispatcher. He testified he sought work directly from the employers but without success. Although there was some testimony to the effect that the union might dispatch a nonmember to a job if he had a letter from the employer requesting him, the dispatcher

¹² They apparently do not claim the evidence is insufficient to support the award of \$2,500 for mental distress.

testified that plaintiff would not have been dispatched even if he had such letter. There was ample evidence to support the award.

The judgment is affirmed.

Bray, J.

Peters, P. J., and Wood (Fred B.), J., concurred.

Filed June 12, 1956,
Walter S. Chisholm, Clerk.

[fol. 176] [File endorsement omitted]

DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE FIRST APPELLATE DISTRICT

Division One

MARCOS GONZALES, Petitioner and Respondent,

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS, ETC., et al.,
Respondents and Appellants.

ORDER DENYING PETITION FOR REHEARING—July 12, 1956

BY THE COURT:

The Petition for a Rehearing filed in the above entitled cause is hereby denied.

[fol. 177] IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA, IN BANK

GONZALES

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.

ORDER DENYING HEARING AFTER JUDGMENT BY
DISTRICT COURT OF APPEAL

1st District, Division 1, Civ. No. 16536

Appellants' petition for hearing DENIED.

Carter, J. of the opinion that the petition should be
granted.

GIBSON, Chief Justice.

I, William I. Sullivan, Clerk of the Supreme Court of the
State of California, do hereby certify that the preceding is
a true copy of an order of this Court, as shown by the
records of my office.

Witness my hand and the seal of the Court this 19th day
of October, A.D. 1956, William I. Sullivan, Clerk, By J. M.
Rogers, Deputy Clerk.

(SEAL)

Filed August 8, 1956, William I. Sullivan, Clerk, By
H. M. Gardiser, S. F. Deputy.

[fol. 178]

PETITIONERS' EXHIBIT No. 8

Pacific Coast
Master Agreement
for
Marine Machinist

Between

Pacific Coast
Ship Builders

and

International Association of
Machinists

and

Local Lodges Nos. 63, 68, 79,
238, 239, 297, 364 and 1173

August, 1952

[fol. 179]

Appendix "A"

The following employers were named in Certification of
Representatives in NLRB Case No. 20-RC-1275:

San Francisco, California, Bay Area Port:

Colberg Boat Works

Columbia Machine Works

Fulton Shipyard

DeLano Bros. Co.

Hyet & Struck Engineering Co.

George W. Kneass Company

*Madden & Lewis

Martinolich Ship Repair Co.

*Pacific Ship Repair, Inc.

*Sausalito Shipbuilding Company

*Stephens Brothers, Inc.

*Thomas A. Short Co.

*Thomson Machine Works Co.

Triple A Machine Shop, Inc.

Wagner & Niehaus General Machine Shop

*West Winds, Inc.

Western Engineering

Seattle, Washington, Area Port

- Alaska Steamship Company
- Bellingham Shipyards Co.
- Blanchard Boat Company
- Bryant's Marina, Inc.
- Dowamish Shipyard, Inc.
- *Commercial Ship Repair
- *Fishing Vessel Owners Marine Ways, Inc.
- Foss Launch & Tug Company
- Goddard Marine Electric Company
- [fol. 180] Jensen Motor Boat Company
- *Johnson Manufacturing Company
- *Lake Union Drydock Company
- Northwest Ship Repair Company
- *Pacific Fishermen, Inc.
- *Prothero Boat Company
- *Puget Sound Bridge and Dredging Company
- *Seattle Shipbuilding & Drydocking Corp.
- Shain Manufacturing Company
- *Todd Shipyards Corp. (Seattle Div.)

Portland, Oregon, Area Port

- *Albina Engine & Machine Works, Inc.
- *Gunderson Brothers Engineering Corp.
- *Northwest Marine Iron Works
- *Willamette Iron & Steel Company

Tacoma, Washington, Area Port

- *Birchfield Boiler, Inc.
- Kasulin-Cole Shipbuilding Corp., Inc.
- *J. M. Martinac Shipbuilding Corp.
- J. M. Martinac & Son Shipbuilding Co.
- *Pacific Boat Building Company
- Peterson Boat Building Company
- Puget Sound Boat Building Corp.
- *Tacoma Boat Building Co., Inc.
- *Western Boat Building Company
- *Participated in negotiations through authorized representative.

Wage Schedule

Tool & Die Maker	\$2.50
Machinists (all classifications)	2.13
Helpers	1.83
Leading Men	2.38

[fol. 181]

PETITIONERS' EXHIBIT No. 9

International Association of Machinists

(Emblem)

CONSTITUTION

of the Grand Lodge,
District and Local Lodges,
Councils and Conferences

Revised by the Committee on Law as recommended by the Twenty-Second Convention of the Grand Lodge of The International Association of Machinists, held in the City of Grand Rapids, Michigan, September 13 to 24, 1948, and thereafter adopted by referendum vote in the month of December, 1948, effective April 1, 1949.

Grand Lodge
International Association of Machinists
Machinists Building
Washington 1, D. C.

[fol. 182] CONSTITUTION OF THE GRAND LODGE
 of the
International Association of Machinists

Article I

Grand Lodge—Structure and Powers

Name and Location

Section 1. This organization shall be known by the title and name of "The Grand Lodge of The International Association of Machinists," and its principal office and headquarters shall be permanently located in the city of Washington, D. C.

Membership and Jurisdiction

Sec. 2. The Grand Lodge of the International Association of Machinists shall consist of an Executive Council and the representatives of local lodges who are duly elected, qualified and seated as delegates in the quadrennial and special conventions provided for in Article II of this Constitution. It shall have power to grant charters for the purpose of organizing, supervising, controlling, and generally directing district and local lodges in any State, territory, or dependency of the United States of America and the Dominion of Canada.

Government

Sec. 3. The government and superintendents of all district and local lodges shall be vested in this Grand Lodge as the supreme head of all such lodges under its jurisdiction. To it shall belong the authority to determine the customs and usages in regard to all matters relating to the craft.

[fol. 183] Government Between Conventions

Sec. 4. Between conventions all Executive and Judicial Powers of the Grand Lodge shall be vested in the Executive Council, which shall be composed of the International President, the General Secretary-Treasurer, and nine (9) General Vice Presidents.

Article II

Grand Lodge Conventions

[fol. 184]

Parliamentary Laws

Sec. 11. Roberts' Rules of Order shall be the parliamentary law of this Grand Lodge and shall apply to all parliamentary procedure of the Grand Lodge, except in cases otherwise provided for by this Constitution.

[fol. 185]

Article XIV.

Benefits

Death Benefits

Section 1. Upon receipt of proof of the death of a member of any local lodge, duly attested by the signatures of the president and financial secretary of said lodge on blanks furnished for that purpose by the General Secretary-Treasurer, to which the seal of the local lodge is affixed, the Grand Lodge shall pay the death benefits based upon the rate of per capita tax paid upon the designated member and the period of his continuous good standing membership in a local lodge or local lodges at the time of his demise.

(a) The death benefit for all members in good standing prior to April 1, 1937 of local lodges upon whose membership the full rate of one dollar (\$1) per month per capita has been paid to the Grand Lodge prior to April 1, 1946, and the full rate of one dollar and five cents (\$1.05) per month per capita after March 31, 1946, and the full rate of one dollar and thirty cents (\$1.30) per month per capita after March 31, 1949, shall be paid upon their period of continuous good standing membership as follows: Three (3) years, fifty dollars (\$50); four (4) years, seventy-five dollars (\$75); five (5) years, one hundred dollars (\$100); six (6) years, one hundred and twenty-five dollars (\$125); seven (7) years, one hundred and fifty dollars (\$150); eight (8) years, one hundred and seventy-five dollars

(\$175); nine (9) years, two hundred dollars (\$200); ten (10) years, two hundred and twenty-five dollars (\$225); eleven (11) years, two hundred and fifty dollars (\$250); twelve (12) years, two hundred and seventy-five dollars (\$275); thirteen (13) years, three hundred dollars (\$300).

The provisions of this section do not change, in any way, the accrued death benefit to which members were entitled under the Constitution as in effect in 1928; but it does operate to extend the time before any increase in such benefits will accrue to members of less than ten years standing.

(b) The death benefit for all members initiated or reinstated after March 31, 1937 upon whose membership the full rate of one dollar (\$1) per month per capita has been paid to the Grand Lodge prior to April 1, 1946, and the full rate of one dollar and five cents (\$1.05) per month per capita after March 31, 1946, and the full rate of one dollar and thirty cents (\$1.30) per month per capita after March 31, 1949, shall be paid upon their period of continuous good standing membership as follows: Three (3) years, fifty dollars (\$50); five (5) years, seventy-five dollars (\$75); seven (7) years, one hundred dollars (\$100); nine (9) years, one hundred and twenty-five dollars (\$125); eleven (11) years, one hundred and fifty dollars (\$150); thirteen (13) years, one hundred and seventy-five dollars (\$175); fifteen (15) years, two hundred dollars (\$200); seventeen (17) years, two hundred and twenty-five dollars (\$225); eighteen (18) years, two hundred and fifty dollars (\$250); nineteen (19) years, two hundred and seventy-five dollars (\$275); twenty (20) years, three hundred dollars (\$300).

(c) The death benefit for apprentices upon whose membership the regular rate of per capita tax only has been paid to the Grand Lodge shall be fifty per cent (50%) of the respective amounts set forth under subdivision (b) of this section.

(d) The death benefit for all machinists' helpers and production workers upon whose membership only sixty-five (65) cents per month per capita tax has been paid to

the Grand Lodge prior to April 1, 1946, and seventy (70) cents per month per capita after March 31, 1946, and ninety-five (95) cents per month per capita after March 31, 1949, shall be sixty-five per cent (65%) of the respective amounts set forth under subdivisions (a) and (b) of this section.

No death benefits shall be paid upon the death of any member who was fifty (50) years of age, or over, at the date of his initiation, or at the date of his last reinstatement as a member of a local lodge of the International Association of Machinists. (This provision does not apply to a person who was initiated, or reinstated in a local lodge prior to January 1, 1917, and who has remained in continuous good standing to the date of his death.)

The term "continuous good standing" as used in this Article designates members of local lodges who are credited and reported to the Grand Lodge as receiving regular monthly due stamps. Members receiving unemployment stamps or retirement stamps, provided for in Article XXII and Article XXIII of this Constitution are not entitled to accumulated benefits covering the months for which said stamps are accepted.

All unpaid "Labor" subscriptions shall be deducted from benefits due.

[fol. 186]

Sick Benefits

Sec. 4. No sick benefits are paid by the Grand Lodge, but any local lodge of the International Association of Machinists may provide in its by-laws for the payment of sick benefits to its members, subject, however, to the approval of the provisions therefor by the International President.

[fol. 187]

Article XIX

Government and Control of Local Lodges

Provisions for Constitution

Section 1. The Grand Lodge shall provide a constitution for the government and control of local lodges, and all local lodges organized and affiliated in the Grand Lodge of the International Association of Machinists shall be governed

and controlled thereby. The Constitution for Local Lodges may be amended in the same manner as provided herein for the amendment of the Grand Lodge Constitution and by no other method whatsoever.

By-Laws

Sec. 2. Each local lodge may adopt its own by-laws, provided that nothing is contained therein which is contrary to the provisions of the Grand Lodge Constitution or the Constitution for Local Lodges. The proposed by-laws of all local lodges, and any amendments thereafter proposed, shall be submitted to the International President for examination, correction, and approval before adoption.

[fol. 189] CONSTITUTION FOR LOCAL LODGES
of the
International Association of Machinists

[fol. 190] Article G
Government of Local Lodges
By-Laws

Section 1. Each local lodge may adopt its own by-laws, provided that nothing is contained therein which is contrary to the provisions of the Grand Lodge Constitution or the Constitution for Local Lodges of the International Association of Machinists. The proposed by-laws of all local lodges and all amendments thereafter proposed, except as to time and place of meeting, shall be submitted to the International President for examination, correction, and approval before being adopted.

Parliamentary Laws

Sec. 2. The Rules of Order governing parliamentary procedure shall be printed in the copies of the Constitution of the Grand Lodge, and no other rules shall apply.

[fol. 191]

Article K

Code

Charges

Section. 1. It is the duty of any member who has information of the violation of any provisions of the Constitution of the Grand Lodge or the Constitution of Local Lodges, by any member or members, to immediately prefer charges in writing against such member or members by filing same with the president of the local lodge to which the accused member or members belong, who shall supply a copy of the same to the member against whom the [fol. 192] charges are preferred and turn over the original charges to the committee provided for by the following Section: (In the event the president, or the president and other officers of the lodge are involved in the charges filed, the next ranking officer shall proceed as herein set forth. In the application of this Section the order of rank of officers shall be president, vice president and past president. In the event the president, vice president and past president are involved in the charges, or are absent, the recording secretary shall call for nominations of a temporary chairman and the members present shall immediately proceed to select a temporary chairman by majority vote. The temporary chairman selected shall then proceed to carry out the requirements of this Section.)

Appointment of Trial Committee

Sec. 2. Whenever charges have been preferred against a member of a local lodge the president of such lodge shall immediately appoint a committee to investigate the charges, take testimony, and decide upon the guilt or innocence of the one accused. The committee so appointed shall within one week thereafter notify the member against whom the charges have been preferred as to the time and place, when and where, to appear for trial. (In the event the president, or the president and other officers of the lodge are involved in the charges filed, the next ranking officer shall proceed as herein set forth. In the application of this Section the order of rank of officers shall be president, vice president

and past president. In the event the president, vice president and past president are involved in the charges, or are absent, the recording secretary shall call for nominations of a temporary chairman and the members present shall immediately proceed to select a temporary chairman by majority vote. The temporary chairman selected shall then proceed to carry out the requirements of this Section.)

Evidence

Sec. 3. The accused shall have the privilege, either in person or by attorney (the attorney being a member of the local lodge) to cross-examine all witnesses appearing [fol. 193] for the prosecution and present all such evidence as he may deem proper in his own behalf. The committee shall consider all of the evidence in the case and thereafter agree upon its verdict of guilty or not guilty. If the verdict be that of guilty the committee shall then consider and agree upon its recommendation of punishment.

[fol. 194] Report of Trial Committee

Sec. 6. The trial committee shall report at the next regular meeting of the local lodge. Such report shall be in two parts as follows:

First: The report shall contain the findings and verdict of the trial committee together with a synopsis of the evidence and testimony presented by both sides.

After the trial committee has made necessary explanation of its intent and meaning, the trial committee's verdict with respect to guilt or innocence of the defendant, shall be submitted without debate to a vote by secret ballot of the members of the local lodge.

Second: If the lodge concurs with a "guilty" verdict of the trial committee, the recommendation of the committee as to the penalty to be imposed shall be submitted in a separate report to the lodge and voted on by secret ballot of the members then in attendance.

Voting on Report

Sec. 7. The recommendation of the committee may be amended, rejected, or another punishment substituted therefor, by a majority vote of those voting on the question, excepting that it shall require a two-thirds ($2/3$) vote of those voting to expel the defendant from membership.

If the lodge reverses a "not guilty" verdict of the trial committee, the punishment to be imposed shall be decided by the lodge by a majority vote of those voting on the [fol. 195] question, except that it shall require a two-thirds ($2/3$) vote of those voting to expel the defendant from membership.

Limit of Fines

Sec. 8. No fine shall be imposed upon any member or applicant eligible to membership in this Association in excess of fifty dollars (\$50.00) unless the same is first approved by the Executive Council.

Appeals

Sec. 9. Appeals may be taken from the decision of any local lodge or Grand Lodge Officer to the International President, provided, however, that such appeals must be taken within thirty (30) days after the decision. Thereafter appeals may be prosecuted in accordance with the provisions of Section 6, Article XXV of the Grand Lodge Constitution.

Rights of Members and Lodges During Appeal

Sec. 10. While any member or local lodge is exercising the right of appeal the financial standing of such member or local lodge shall not be impaired by refusal to accept dues or per capita tax until after the Executive Council has passed upon the appeal. Should any member or local lodge decide to appeal from the decision of the Executive Council they must comply with the provisions of Section 6, Article XXV of the Grand Lodge Constitution. No individual member or local lodge shall appeal to the civil courts for redress until after having exhausted all rights

[fol. 196]

102

ARTICLE K

1 of appeal under the provisions of this Constitution and
2 the Constitution of the Grand Lodge.

W. H. Wayne

Chairman.

Lloyd Weber

Secretary.

Frederick E. Brown

A. G. Smith

W. H. Gorman

COMMITTEE ON LAW, 1949

H. W. Brown

International President.

Attest:

Eric Peterson

General Secretary-Treasurer.

[fol. 197] IN THE DISTRICT COURT OF APPEAL OF THE STATE
OF CALIFORNIA IN AND FOR THE FIRST APPELLATE DISTRICT

DIVISION ONE

ORDER AFFIRMING JUDGMENT

San Francisco, Tuesday, July 12, 1956.

16536—Gonzales v. International Association of Machinists.

The judgment is affirmed. Bray, J. We concur: Peters,
P.J., Fred B. Wood, J.

[fol. 198] CLERK'S CERTIFICATE (omitted in printing).

[fol. 199] SUPREME COURT OF THE UNITED STATES

No. 539, October Term, 1956

INTERNATIONAL ASSOCIATION OF MACHINISTS, an Unincorporated Association; CHARLES TRUAX, Individually, etc.,
et al., Petitioners,

v.

MARCOS GONZALES

ORDER ALLOWING CERTIORARI—January 14, 1957

The petition herein for a writ of certiorari to the District Court of Appeal of the State of California, First Appellate District, is granted and case assigned for argument immediately following No. 427. The Solicitor General is invited to file a brief expressing the views of the National Labor Relations Board.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.